9-11-29

THE

Ancient, Legal, Fundamental, and Neceſſary Rights

OF

Courts of Juſtice,

In their Writs of

Capias, *Arreſts*, and *Proceſs of Outlary*.

And the

Illegality, many miſchiefs and Inconveniences, which may arrive to the People of *England*, by the Propoſals tendred to His Majeſty, and the High Court of Parliament, for the aboliſhing of that old and better way, and method of Juſtice, and the eſtabliſhing of a new, by peremptory *Summons* and *Citations* in Actions of Debt.

By *Fabian Philipps*, Eſq;

Antonius Matheus in Præfat: ad Lib. de Auctionibus,

Arduum eſt vetuſtis novitatem dare, novis Autoritatem.

Dira per incautum Serpunt Contagia vulgus.

LONDON,

Printed for *Chriſtopher Wilkinſon*, and are to be ſold at his Shop at the Sign of the *Black Boy* in *Fleet-ſtreet*, over againſt St. *Dunſtans Church*, 1676.

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and

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CHAP. I.

The many mischiefs and inconveniences which may happen by an Act of Parliament, to be made for the more speedy recovery of Debts upon Bonds or Bills, under the Debtors hands and seals, in the manner as is by some desired.

THe Suggestions and that which should be the Causes or inducements to such an Act of Parliament are greatly mistaken; or if there happen any such Evils as are pretended, they are *Raro Contingentia*, and do but seldom happen.

And when they do arise, have their originals from other Causes, but not from Arrests in Actions of Debt, which by the shortest account, are and have been of 374. years continuance, by order and approbation of many Acts of Parliament, but may be demonstrated to have been of a far greater Age; and equal to that of the Eldest Court or *Method* of Justice, in this, or any other civilized Nation in the world.

The miſchances happening by two or three Bailiffs in 20. or 30, years, killed moſt commonly upon the ſcore of their own provocation, rudeneſs and miſdemeanors, are when they do ſo happen in the unruly Suburbs of *London* towards *Weſtminſter*, for in the other too vaſt extent of them, an Age or Century is ſcarce able to furniſh out one of thoſe evil accidents.

And within the City of *London*, where Credit ſeems to be the Life and Soul of Trade, and their growing, and already gained Riches there may be reckoned in their two Sheriffs Courts twice every week in the Year, holden no leſs than two hundred Actions and Arreſts weekly, entered and made upon Debts which makes no more diſturbance than a quiet putting in of Bail, which ſecures the Debt more than it was before.

And in all the Counties, Cities, and Corporations of *England* and *Wales*, as well as in the City of *London*, the death of a Bailiff, Serjeant at Mace or Catchpole, is not to be found in the remembrance of the moſt aged perſons.

And the Writs and Records of the Courts of *Weſtminſter*, from which very many Writs

and

and Proces do Iſſue, and are to be returned into, cannot ſhew any frequency of Writs of *Reſcues*, or any aſſaults made upon the Sheriffs or their Bayliffs, in the Execution of them.

And if the Propoſers of this Bill and great Alteration of the Laws, will not think themſelves to be prejudiced if they ſhould ſpeak according to the Truth, and what every man upon the viſible evidence of demonſtration and Records, may rationally believe.

It cannot be denied, but if there be in one County or City *two Thouſand* Writs or Actions of Debt, made out in a year to Arreſt, not above five hundred of them do proceed or come to Appearance, and that of that *five hundred* unagreed, there are ſcarce *half* of them that are declared againſt, or make any defence, and not *half* of that *half* ever come to be tryed, and that thoſe do alſo moſt commonly come to an end or determination.

Where there is no Demurrers, or matters of difficulty in Law, or peeviſhneſs in ſome of the parties to occaſion the contrary, within leſs than a third Term, that many thouſands of Actions are both in the Superior courts at *Weſtminſter*, and the County and hundred courts,

court Barons, and the inferior Courts, determined within a few days, weeks, or months, very many in a quarter of a year, and those that remain uncompounded and undispatched, do not survive the contention or trouble of half a year after the Suit commenced or begun.

So that all things considered, if the Laws and *Praxis* in *Scotland*, *France*, *Spain*, *Germany*, *Italy*, *Holland*, *Brabant*, and all the other Kingdoms and Provinces of the Christian world, civil and municipal, shall be rightly compared with our more happy, less troublesome, and chargable, they will not be found to afford to their people such a quick dispatch of Justice adæquate, and ready way unto it as ours have done, and will always do, if they be not turned out of their old course and channel.

By an Invention now proposed, which will be as illegal as unparallel'd, and hath no other precedent or pattern then that late way of proceeding in Actions of *Ejectment* hatched in the leveling or *Oliverian* times, and hath then and ever since amongst knowing and good men, gained no better an esteem then that of a publick grievance, and a *monstrum horrendum informe ingens cui lumen ademptum*, spawned and bred up in

a Rebellion, when Monarchy was Baniſhed, and the word of God and Laws of the Land were ſhamefully, and as much as they could, be miſuſed.

For that there is an abſurdity, confuſion, and *Hyſteron Proteron* in it, putting the Cart before the Horſe, and making a Declaration which ſhould be after a ſummons Executed, and Appearance entred to precede the Appearance, and at the ſame time go along with the Summons, with a prefixion but from one Terme to the next, which betwixt *Eaſter* and *Trinity* Terme, being but with an Interval of ſeventeen days, Sundays not excepted, will be too ſhort, peremptory, and prejudicial to Defendants, and in the *Lent* Vacation, which is commonly three Months, and the Summer Vacation which is never leſs than 15 weeks, and ſometimes longer, may be as inconvenient to Plaintiffs, who by the ancient and more legal prefixions, with the ſmall diſtance of time of 15 days from return to return, in the Term time might ſooner have recovered their Debts, appoints no Tryal by Juries, nor declares by what certain Authority or Court the Summons ſhall be made, whether by the Parties,

Plaintiffs,

Plaintiffs, or otherwise, and gives a promiſcuous Conuſance of Pleas to all the Courts of Law at *Weſtminſter*, when as all but the court of Common Pleas, (ſome caſes of priviledge excepted) have by our ancient Laws, and *Magna Charta*, no juriſdiction or right therein.

Makes the *Summons* for a time to come to falſifie the *Declaration* if at the ſame time deliver'd with it, to ſuppoſe it to be already made, and the *Declaration* which ſuppoſeth it to be already made, and is and ought to be a copy of the Record in the Court wherein the Action is pretended to be laid, and intended to be Tryed; to ſay he was Summoned when he was not, the *Fieri* to be a *Factum*, and the future to be a *paſt* or *preſent*, and will create ſome contradictions when the injured defendant ſhall come to wage his law, make *Affidavit* of a *non Summons*, or bring his action for damages ſuſtained by a falſe *Affidavit* or returne

And will be ſure enough to produce as neceſſary effects of cauſes, very many not eaſie to be altogether foreſeen or enumerated miſcheifs and inconveniences.

Overturn and mutilate all our fundamental Laws,

Laws, upon which the Monarchy of *England*, the beſt of Governments, and leſs arbitrary in the world, and the Juſtice of our Nation have for above one *Thouſand* years been built and eſtabliſhed, and cut and canton both it and our well tempered Monarchy into little pieces, and bring them as near as may be to an unhappy Republique, which will neither fit, or be for the good of the Nation.

Deform, or almoſt annihilate our long approved Courts of Juſtice at *Weſtminſter*, by taking away a great part of the Proceſs, and excellent Formes and Proceedings thereof, as *Adonizebek* is ſaid to have done to his Captive Kings, when he did cut off their Thumbs and great Toes, deſtroy a great part of the Kings Prerogative which limited and bounded by our Laws and our Kings and Princes Conceſſions, is no more than his juſt and neceſſary means of Government, and in and by his High court of *Chancery* ſuperintends over all the Courts of Juſtice in the Kingdom. 1. *Judges.* 6.

And as to the Law and Latine part of it, and granting out of Writs remedial under his *Teſte meipſo*, will appear to be a Court as antient as the reaſon and civility of the Nation, from

which all the other Courts of *Westminster*-Hall, County-courts, Sheriffs Turns, Court-Leets and Baron, and all other Courts inferior in the Realm, may truly be said to have their beginning, the *Matrix* or Womb of all our *Fundamental Laws*, either before or since *Magna Charta*, which had its birth and being from it, the *Repository* (under the King in the absence of Parliaments) of Justice in all cases where an appeal to the King or Parliament, or the helps of Parliament shall be necessary, the *Custome* of the Nation *Officina Justitiæ*, place and work-house of Justice, *& Lex Terræ*, as it was in the year 1641. alleaged to have been by the then House of Commons in Parliament.

Take away a considerable part of the rights and priviledges of Parliaments, Nobility, Peerage and Parliament Men.

And the Liberties not only of them, but many of the Gentry, and men of great Estates in the Kingdom, some of them very largely extended in the Executing of Process and *returna brevium*, by the Charters of our Kings and Princes, or a long prescription have been granted or permitted, and vested in them, and their Ancestors

and Predeceſſors, and in 52 counties of *England* and *Wales*, may after an account but of 20 in a county one with another, amount to no leſs than one *Thouſand*, and of the Lords alſo of Mannors in their court Barons, which, according to the computation but of *three hundred* Mannors and court Barons in every of the ſaid Counties one with another, will in all probability make a total of *fifteen Thouſand and ſix Hundred*, if not a great many more, which the Commons in Parliament in the 33. year of the Raign of King *Henry* the VI. were ſo unwilling to have invaded by the then undue practiſe of Attournys, as they did Petition the King *for the Love of God, and in the way of Charity*, to forbid it under great Penalties, which the King granted, *If it be thought to the Judges reaſonable*, who being thereupon conſulted, an *Allocatur* of that Petition was entered in the Margent of the Parliament Roll. Rot. Parl. 33. H. 6. M. 1.

Overthrow, or put into a *Chaos* or confuſion all or much of the long uſed courſe and order of Proceſs and Juſtice in the large and ancient Juriſdictions of the courts of *Marſhalſea*, Principality of *Wales*, Dutchy of *Lancaſter*, and county Palatines of *Cheſter* and *Durham*.

And do the like to those great Jurisdictions of the *Cinque-ports*, and the *Admiralty* whose busines and the ancient course and manage thereof, cannot conform to the designs of such an unpracticable way of getting in of Debts.

Lame and discourage the very ancient and useful, if something better ordered Offices of *Sheriffs*, *Under-Sheriffs*, and their *Bayliffs*, in the Execution of Justice, and the Proces of the courts thereof, by turning much of their busines into a worse condition.

Change and inconvenience the Government of the *City* of *London*, and Borough of *Southwark*, and of all the Cities, Boroughs, and Towns corporate of *England* and *Wales*, in their several administrations of Justice.

And like a *Hurricano* whirling, and passed through the Nation, at once spoil or confound all the *Courts of Justice*, great and little, therein and abridge or take from them their antient and hitherto justly allowed Rights and Jurisdictions, which to them and their predecessors, have with our incomparable *Magna Charta*, been no seldomer than 30 times confirmed by Acts of Parliament.

VVill be directly repugnant unto, and against *Magna Charta*, and the Statute of 42. *E.* 3. a branch or limb thereof, which at the *requeſt of the Commons*, and for the good governance of them, ordained that *none be put to anſwer without preſentment before Juſtices, or matter of Record, or by due Proceſs of Law, and Writ Original, according to the Old Law of the Land.* 42. E. 3. cap. 3.

And if any thing ſhould from thenceforth be done to the contrary, it ſhould be void in the Law, and holden for Error.

Be a great loſs and damage to the King, in his Fines and Seals of Original VVrits, the Seals of the VVrits and Proceſs Iſſuing out of his *Courts of Kings Bench, Common Pleas, Exchecquer, Principality of Wales, Dutchy of Lancaſter*, and *County Palatine of Cheſter*, and the amercements and Iſſues forfeited or returned upon *Cæpi Corpus*, Writs of *Habeas Corpus*, and *Diſtringaſſes*; all which were intended by Law to be aſſiſtant to the defraying of his great charges in the Salaries and ſupports of the *Lord Keeper, Maſter of the Rolls, Judges*, and Officers imployed in the Adminiſtration of Juſtice, which taken away, will render him to be in that particular leſs conſidered, and in

a worſe caſe then *Oliver Cromwel* was, who by his miſcalled Parliaments, and *Inſtrument* of an Arbitrary *Protectorſhip*, was beſides his charge of the Navy, and Horſe and Foot Guards, allowed *two hundred thouſand pounds per Annum*, for the charge of the Government and Adminiſtration of Juſtice.

Take away from the King much of the Law Tax upon the writs and proceſs, which a late Act of *Parliament* conſented unto for ſupply of his urgent occaſions, and bereave him of his never denied Prerogative, and benefit of *Utlaries*.

Extirpate the Antiently and legally allowed Eſſoynes *de malo lecti*, or *veniendo*, *de ultra mare*, or *in ſervitio Regio*, or any hinderance which might happen to excuſe their non-appearance after a lawful Summons in Debt, which by the Laws of Nature and Nations have been in caſes of neceſſity, Inundation of waters, or imployment for the publick never denied.

Turne all, or the moſt of the proceedings upon Actions of Debt into *Surprizes* and *Defaults*, and diſturbe the more deliberate, ſatisfactory, and ſafe way of Tryals by Juries.

Make

Make a default which no Law ever did, to have the force and effect of a Verdict by Jury when there was none.

And debar the helps of *Writs of Error*, when all Mankind, as well Judges as Juries, and the parties and their Councel on both ſides, may erre, and can have no aſſurance to be Infallible.

Deprive the People of that part of our *Magna Charta*, which would have *no man amerced for a ſmall fault, but after the manner of the fault, and for a great fault, after the quantity thereof, ſaving to him his Contenement, and to a Merchant his Merchandiſe*, and that *none be amerced but by the Oath of good and lawful Men of the vicinage*, which did not certainly intend a Debtor to be ruined for a ſmall default, or to be debarred of his Tryal by his Peers. 9. H. 8. cap. 14.

And obliterate the equity of the Act of Parliament of 13. *E.* 1. which providing *that he that recovereth* a Debt, may Sue Execution by writ of *Fieri facias*, or *Elegit* excepteth *the Oxen and Beaſts of the Plow*, and cannot be rationally ſuppoſed to favour ſuch a Ruine upon a Debtor, when for want of evidence and witneſſes, he ſhall not be able to eſcape the fury of ſuch a default. 13. E. 1. cap. 18.

And

9. H. 3. ca. 9. And likewiſe that part of *Magna Charta* which granted that *the City of London ſhould have and enjoy all the old Liberties and Cuſtomes, which it hath been uſed to have, and that all other Cities, Boroughs, and Towns, and the Barons of the five Ports, and all other Ports, ſhould have all their Liberties and free Cuſtoms*, and did not take it (as it may be conjectured) to be any reaſon that a ſurprize in Actions or Suits for Debts, ſhould by Malice or Tricks, without pleading, or reaſonable time given for Defence, deſtroy them and their Trade, and Families, and all their endeavors before and after.

VVhich the prudent *Romans* held to be ſo unjuſt, as where they gave a Plaintiff but three hours to Plead, they allowed the Defendant nine.

And it is not yet gone out of the memory of Man, that in the year 1642 or 1643, the courſe of ſtealing or hurrying of Judgments, now unhappily borrowed from the Innovation of the late wicked times of Uſurpation in Actions of Ejectment, was believed by Juſtice *Bacon* in the Court of *Kings Bench*, and Juſtice *Reeve* in the Court of *Common Pleas*, to be ſuch a violation

violation of our Laws, as they Publickly declaimed againſt it, and threatned to impriſon any Attorney that ſhould practice in ſuch a manner.

And with great authority and warrant of our Lawes, and right reaſon, for that as it was juſtly and truely ſaid by the Judges in the Reign of King *Edward* the firſt, that *non ſummonitus nec attachiatus per Legem terre prejudiciari non poteſt*, and *Fleta* an approved Lawyer in the Reign of that King, and King *Edward* the ſecond his Son hath publiſhed it to be a great and known Truth, that the Court of *Common Pleas* cannot hold Plea in real and perſonal Actions, without the Commiſſion or Authority of a Writ original out of the *Chancery*, and that without it, *nec Warrantum nec Juriſdictionem neque Coercionem habent*, and our Laws did then and long after not proceed upon ſuch warrant or commiſſion until the Plaintiff had actually given ſureties to proſecute and maintain his action, and the Sheriff to whom ſuch original Writ was directed, for to ſummon or attach the debtor to appear before the ſaid juſtices had returned that he was ſummoned or attached as the nature of the Action

Fleta. lib. cap. 34.

 required

required, or had nothing whereby to be ſummoned or attached.

When but a few years preceding, that well deſerved indignation of thoſe two worthy Judges, that excellent, moſt juſt, lawdable, and rational courſe of juſtice had been endeavoured to have been ſubverted by one *Elſlot* of a degree betwixt an Attorney and a Barriſter, and a man very bold & able enough to make and contrive tricks and abuſes in Law proceedings, who having about the middle of the reign of King *Charles* the Martyr as a *Reprobate* and *Caſt away* in the Law ſhifted himſelf from *England* into *Ireland*, and from thence after ſome bad prancks there played returning back again with as much poverty as impudence attending upon him, and having a deſire to get ſome money by a contrivance, to gain a ſudaine poſſeſſion of ſome Lands or houſes for one as bad as himſelf, upon a judgment by default againſt the Landlord or his Tenant who were to know nothing of it, cauſed a declaration to be prepared in an action of Ejectment againſt a feigned Deſ. or ejector in the name of a feigned Leſſee upon a ſhort Leaſe pretended to be made by his naughty Clyent, and left at the houſe of the Tenant

Tenant, who not well apprehending the force and extent of the project, a judgment by default was entred, poſſeſſion ſurprized and taken for which upon complaint made to the Judges of the Court of Kings Bench, in which Court the action was ſuppoſed to have been laid, and examination of the fact, the judgment was made void, poſſeſſion reſtored, and Maſter *Elſliot* the contriver, committed and told by Juſtice *Barkley*, that it was *a ſhame that ever he ſhould come or ſhew his face in a Court of juſtice.*

Howſoever getting himſelf afterwards enlarged, and the confuſion and troubles of the late civil Warrs diſturbing and breaking in upon the Law and all the Courts of Juſtice, Mr. *Elſliot*; began again to appear to be ſomebody, & engages in another exploit, which was to gain by the like device, accompanied with force & ſome other naughty ways, poſſeſſion of an houſe and a very conſiderable eſtate in Lands in the County of Eſſex of Sir. *Adam Littletons* the Father of Sir *Thomas Littleton* Knight, now a member of the houſe of Commons in Parliament, who to his great coſt and trouble endeavouring to extricate and free himſelf and his Fathers Eſtate from the peril and danger of

ſuch a villany, may well remember that a counterfeit record was in that pretended ſuit privatly layd in the office of the Records in the Tower of *London*, ſworn unto, and offered to be juſtified, but was at length taken as it ought to be for a Roguiſh piece of Forgery, and Sir *Adam Littleton* and his Eſtate freed from any further diſturbance.

Whilſt that no ſmal parcel of Knavery being in great reſpect with the Agitators of the then called Parliament Army, *Levellers* & other *State moulders*, and ſtiling himſelf the Eſquire *at armes*, being ſomtimes a Priſoner in *New-gate*, and ſomtimes out, wanted not a Liberal maintenance from his *Patrons* and *great Maſters*, until death ſhortly after unexpectedly rid the world of him.

From which reaſonleſs and ungodly *formula* or way of proceeding, rather to be exploded then embraced in actions of Ejectment, and ſo utterly againſt the Law (evil examples being oftner followed then good) by ſome of his proſelites and the connivance or want of courage in ſome of the Judges, in the time of the *Cromwelian* uſurpation, *dum ſui non fuerunt*, knowing better, but doing worſe, the ſame came again to be

be revived, and creep into an allowance, with a note indorced by the Attorney in the name of the *incognito* or casual ejector, directed to the Tenant or Landlord, requiring them to appeare and look to the action, and confess *Lease Ouster* and *Entry*, otherwise he must and would confess a judgment, or let it pass by default.

As if such a judgment acknowledged by practice and confederacy, could not with a great deal of ease have been reversed by a court that should not be so abused, and the parties contrivant severely punished.

Of which kind of irregularity in the Law, and wandring out of the *old Paths*, never to be justified, the Justices of the court of Kings-bench have been so sensible as they have for some years last past, caused a Writ of *Latitat* (which antiently was used to be warranted by a Writ Original of the Chancery) to be awarded and sued out against the feigned ejector.

And it is not half a yeare agoe, since the Pillory of *Westminster* proclaimed a *Brewer* to be more Crafty then wise or honest, when to gain an indirect possession of some houses by Judgments upon defaults, having fudled the Tenants with Drink and Tobacco. And

And giving them peices of the declarations as waſte paper, when they knew not what had been written therein to give fire to their tobacco thought he had ſnapt them with judgments upon defaults when he made oath that he had left declarations at their houſes, where they were in that manner made drunk, and could neither ſay or ſware to the contrary.

But *unde* or from whence ſoever it came, or if this new manner of Law proceedings could have derived its pedegree from any more Noble an Anceſtor.

It will if every Client and his Attorney who is no member of the court, but only repreſents his Client, ſhall be ſuffered to make the ſummons or Citations, and to be both Party, Judge, and Sheriff, without an authentication of hand, ſeal, or ſtamp, of any Court or their ſubordinate officers (which no Court of Juſtice, Chriſtian or Heathen, hath yet adventured to allow) be hugely oppoſit to the rules and maximes, as well of the Civil as the Comon Law, uſed for more then one thouſand years, that *nemo privatus Citare poteſt*, and bereave the high court of *Chancery* of thoſe Rights which do truly and juſtly belong unto it, and the Judges of all other the Courts and

circuits

circuits of *England* and *Wales*, who by an act of Parliament made in the thirteenth year of the Reign of King *E.* 1. and by ancient cuſtom long before uſed are to have their *Clericos Irrotulantes* ſworn and intelligent officers to record and make their writs and proceſs. 13. E. 1. cap. 30.

Fruſtrate the Antiently well approved power of the court of Chancery in their proceſs upon contempts, when there ſhall be as there will always happen to be matters of Equity in caſes of Fraud, Combinations, Hardſhips, or Rigours of Law fit to be releived by the ſaid court, and a great deale more then were formerly, if the Creditors ſhall by this new Model of common Law proceedings be let looſe to act their own will and furies upon their inſolvent or not punctually performing debtors, and that high court ſhall upon contempts or diſobedience of its proceſs of Attachments or commiſſions of Rebellion have no power to puniſh them by arreſt or impriſonment being the only meanes *tueri Juriſdictionem* to maintain and uphold its Authority and Juriſdictions.

The hands of Juſtice and coercive power & authority of it, will be paralitique manacled & uſeleſs

leſs in the laying by of the Sheriffs and their very neceſſary under Officers, by whom the Law received its Execution, which is as the life of it, and might as well be made uſe of in the Summons, Attachment or Proceſs before Judgment, as they are to be afterwards, where there are and may be dangers of killing of men (if ever there were ſo many as is informed) by how much an execution after Judgment of Body or goods being unbaylable, is more terrible, and to be avoided by the debtor, then that which is baylable, and in many caſes to be diſcharged by an appearance only to the action, and if the Plantiffs or their ſervants, the Attornies, Clarks, Conſtables or Porters, muſt be the Sheriffs or their Bailiffs, there may be more danger of reſiſtance, killing, tumults, and commotions, then ever there was of Bayliffs, and of more extortion and tricks, in thoſe that are not ſworn, then in thoſe that are ſworne and bound up by many Statutes and Acts of Parliament, and the penalties thereof.

Or if arreſts and the execution of Juſtice by the Sheriffs and their ſubordinate officers could be any primary or never failing efficient cauſes of the ſlaughters ſeldom happening upon arreſts

arreſts, or that to prevent it there will be any ſuch neceſſity of laying aſide or diſuſeing that neceſſary office of Sheriffs in the execution of Juſtice, as well after judgment as before, that of the raiſing the *poſſe comitatus* in caſes of a forcible reſiſtance of their taking poſſeſſions or levying the Kings debts, is to be put under the ſame fate, and neither Sheriff or Conſtable may arreſt a felon, but obey the like method of Summoning him at his houſe or Lodging, to know if he be willing to be indicted, come to his Trial, and adventure a Hanging.

But no well built or grounded reaſon being likely to be found to ſupport ſuch reaſonleſs and lawleſs opinions, the Adorers of ſuch Imaginations may aſſure their diſciples that *Elias* is to bring the reaſon, and that until then they muſt expect it, and may in the mean time do much better to give them leave to believe that.

Such a Syſtem of *Infamy and Cruelty*, and an unmerciful credit, tearing courſe of ſummoning publickly by papers left at the debtors Houſes or Lodgings, or which is worſe, faſtned upon the outward doores, which the malitious contrivances or tricks of ill affected or violent

Plaintiffs, if not prohibited by ſome ſevere penalties, will too often prompt them unto, and in the conſequence bring an Inundation of ruins upon this Nation who do now more than half of them live upon credit, and are ſo generally indebted, as they will not be much wide or from the Mark, who do believe that half the Lands and Eſtates real and Perſonal of the Kingdom ſold to the utmoſt will not be enough to pay the debts thereof.

And by Suing out as it were Commiſſions of *Bankrupt* againſt all the Nation, write, *Lord have mercy upon us*, upon too many mens doors, and now there is ſo little money left them, take away the Credit that ſhould help to ſupport them.

Add affliction to affliction to all the Loyal nobility Gentry, and Citizens, that had impoveriſhed themſelves by their Loyalty, and taking part with their King and his Laws, and the Church of *England*, and leave them to the inviſible mercy of thoſe that did help to Rob, Plunder, and Sequeſter them.

Bankrupt and undo moſt of the Tradeſmen, and be a meanes to help the over-haſty Creditors to a compoſition of four Shillings in

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the Pound, or a great deal leſs, when as otherwiſe, with a little patience, they might have had their whole debts pay'd unto them, and make the unbridled fury of one Creditor, to be a cauſe of the never payment of other Creditors debts.

When plaintiffs are many times as unreaſonable as they are unmerciful, inſolent and unperſwadable, where they can either find or keep advantages, and that many an Action as well as many a Plaintiff, may be Malitious, Oppreſſive, Unjuſt, and Vexatious, and ſuch a fancied ſpeedy way of geting in debts, may be very inſtrumental for the advance of evil purpoſes and knaviſh deſigns.

No Inhabitant of *Wales* where their Laws do already allow them an *Iterum ſummons* nor in the *Cinque ports* or any of the Counties palatine of *Cheſter*, *Lancaſter*, or *Durham*, will be able to borrow any money in *London*, or out of their own Countries upon the beſt ſecurity, when that thoſe who ſhall be imployed to ſerve the Summons, being not the Sheriffs officers, may be in danger to be beaten, and cannot be outlawed without ſeveral Writs of *Capias*

Many Tradeſmen do only ſubſiſt by their credits, and take up great ſums of money upon an opinion of their preſent abilities, or future gain, by which they do commonly give no other ſecurity then their Perſons, and by the advantages therof do many times by their induſtry attain unto great Eſtates, but if the proceſs of arreſt be taken away, they can hope no more to be ſo eaſily entruſted, for that an Attachment of the perſon doth ſecure the plaintiffs debt, either by preſent payment or cauſing other ſatisfaction, which the proceedings by ſummons in this manner will never attain unto.

The fear and diſgrace of a Proceſs of Arreſt do put a period to many ſuits before the perſons be attached, and before apparance, for that as a man will give all for his Life, ſo he will do much for his Liberty, and when men will either not regard a Summons, or delay to give ſatisfaction or an apparance, they will make a great deal more haſt to prevent an arreſt.

Debtors are ſeveral times or often called upon by their Creditors, which is aſmuch as a Summons made without a Legal Officer, but yet neither that nor a VVrit of ſummons doth drive the moſt of them, to any care of

payment, until the Proceſs of Arreſt do iſſue forth, which is more compulſory, and will be ſure to prove a more ſpeedy remedy for the Creditors then the way of Summons.

And a large and long experience *conſenſu rectæ rationis & totius antiquitatis*, and many ages will evidence that the benefit of the proceſs of arreſt hath been very great to this Nation, and that the care and wiſdom of ſeveral Statutes and acts of Parliament who have always provided for the publick before the private, univerſals before particulars, believed certainties before incertainties, and long and never failing experiences before remote probabilities, and have from time to time given a larger extent unto it then before it had, may tell us that for many ages paſt it hath been the beſt remedie for the people to recover their debts, and to compoſe other differences that our forefathers in ſome hundreds of years laſt paſt could deviſe.

And that to give the force of an *Utlary* after Judgment in a few days upon ſuch a peremptory ſummons betwixt the tearmes of Eaſter and Trinity, and in the longer intervals, betwixt the other termes, doth ſcarcly allow half the time, which our Laws thought reaſonable

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and fit to the bringing of a man to be outlawed, which for its rigour and severity, was not by Law as *Bracton* saith to be over hastened, but to be after three Writs of *Capias* returned *non est inventus* and eight several contempts more.

Bracton. lib. 2. de coronâ. cap. 22.

Will settle upon the plaintiff a libertie appropriated only to a special *Capias utlagatum*, to take both body and goods at one time, which the Law where the body is first taken, although the Lands and Goods of the Debtors, unless in cases of extents, upon Statute, Merchant, or of the staple, and *Utlary* be otherwise sufficient to answer the debts will not condiscend unto.

When unless it could be probable possible or Imaginable, which a large proportion of melancholy can hardly do, that a personal estate in goods, money, or Chattels, in the debtors house or shop, could be allways ready and enough to pay that and all other his debts (and the King were no Creditor, for his debts are to be first satisfied) there must where a Man owes one thousand Pounds to ten several Creditors, of one hundred pounds a piece, and hath but one hundred pounds in estate towards the satisfaction of those several debts, and one of

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the ten Creditors hath out run the other & ſeiz'd it, be a neceſſity of a *nihil habet* to be returned, & the ſevereſt Plaintiffs, muſt againſt their wills be conſtrained to forſake the *By-ways* of this new kind of ſummons, and make what haſt they can with ſome repentance into the bargain to return out of them into the plain roads and high-way of arreſting the Body, or where there is a haſte of the getting in the mony, or there is a *ſuſpitio fugæ*, or his inſufficiency, or a neceſſity (which may often be the caſe) to outlaw a fugitive, or inviſible debtor not eaſy to be taken or come at.

Bonds given to the Sheriffs, or ſpetial Bayle before Judges, ſo many times neceſſary according to the old uſage and cuſtoms of our Laws & Courts of Juſtice, & fortifying many a debt, will by this new courſe of proceeding be no more to be hoped for or inſiſted upon by the Creditor or Plaintiff, who will be put in a worſe condition then they were before, and where upon ſome doubt or miſtruſt of the debtor or his Eſtate he might have had two more ſureties or Strings to his Bow then he had before, that the Deft. ſhould anſwer the Action, or yield his body to Priſon, muſt now be content with what he

he did not like, when by an arreſt he might have had a better ſecurity.

Inſtruct or give warning in a *Lent* or Summer Vacation to an inſolvent or ſuſpected debtor, to convey away himſelf, goods or eſtate, and by ſuch an unmerciful way of Proceſs and proceedings, will not ſeldom incumber and ruine their debts and debtors, as many cruel creditors in the times of a more gentle and Chriſtian way of proceſs have done, to the great loſs of themſelves as well as others, for want of a competent prudence and patience.

Occaſion, multiply and increaſe perjuries, which are already too frequent and in faſhion.

And therefore when all is done, and ſome ſcores of good Acts of Parliament, without repeal, or any mention of them, and many a lawful reaſonable and uſeful cuſtom and courſe of the Courts of Juſtice of this Kingdom ſhall be run over to prepare a way for this innovation, which if it be well inſpected and conſidered, and put in the Ballance of Law and right, Reaſon againſt the old, and that he or his poſterity that is now a Plaintiff, may be hereafter defendants, will certainly appeare to be much lighter than the old, which is the better and more

more experimented, and not only to be very destructive to the design held forth, and benefits expected by it, but very disproportionable to the publick good & the Laws & Liberties of the people.

CHAP. II.

That the most part of that desired Innovation, was borrowed from the said Mr. Elsliots *wicked invention, and a wild* System *not long after framed, and from some also now much disused part of the Civil Law.*

AND the promoters of the *patarre* invention, to blow up the Estates and better part of the People (for Usurers, Brokers, oppressors, and such as grind and devour the languishing and wanting part of them, are not like to be malignant to such a profitable engine for their purposes) when they shall have made their accompt with God and Man, for bringing such a desolation upon their fellow-subjects, for some selfended intrests.

Will bring themselves and all to this conclusion, that the most part of it was taken from Mr. *Elsliots* wicked invention, and another part of it framed out of a wild *System*, not long after thrown amongst a disaffected party of the People, to infect those who were mad enough before; and that the little colour and glimmering of reason, that seems to keep them company, was borrowed from a now much disused part of the Civil Law; that in cases of contumacy, the

Judge after a citation served, and disobeyed, did *mittere Actorem in possessionem bonorum.*

Clem. 1. de *Jud.* Gail. 1. obs. 16. l. ejus sect. si quis ad municip.

And that even in that Custom of the Civil Law, these *Innovators* did not consider as they might, that such a citation publick or peremptory, is by the Civilians themselves acknowledged, to be a deviation *à jure communi, & in casibus necessitatis tantum recepta quando alio modo, quis citari non potest.* Secondly, *Ubi locus non est status ubi citandus habitat.* Thirdly, *Si persona est vagabunda quo casu edictum eo loco affigi debet ubi solita est conversari.*

That such a possession is notwithstanding but fiduciary, and the Plaintiff only put in possession, *Custodiæ causa & vice pignoris detinet donec reus veniat responsurus.*

That a 2d. trial, decree, or sentence, & *restitutio in integrum* do not seldom afterwards follow.

And that appeals from the lower Courts or Judges, to the higher Commissions of *adjuncta* and *revisione*, will never allow that Law to be so desirable, expedite, or little chargeable as our Common Laws are, which our *Novellists* would perswade us to renounce and abandon.

Of which and the disparity of a great part of the Body of the Civil Laws with those of our muni-

cipal and common Laws, the Dukes, Earls, and Barons of *England*, were ſo ſenſible as in the eleventh year of the Reign of King *Richard* the 2, in the cauſe and appeal of *Thomas* Duke of *Gloceſter* and others againſt *Robert de Vere* Duke of *Ireland*, the Earl of *Suffolk* and others they denyed to proceed to Judgment thereupon, according to the Law civil and declared *que la Roialme de Angliterre ne eſtoit devant ces Heures ne al intent du Roy & ſignieurs de parlement unques ne ſerra rule ne govern per le ley civil*, and our Anceſtors more than what they retained of ſome of the actions rules and directions of reaſon which that excellent Law afforded, and was neceſſary, would not as our learned *Selden* hath obſerved *conſtanti adhæſione* by a conſtant perſeverance and affection be drawn from that ſingular reverence and eſteem which they had of the common Law, which ſo long a courſe of time and antiquity had fitted to their nature and *Genius*.

11. R 2. in Rot Proceſs & Judic contra le duc. d' Ireland & autres.

Selden differt. ad Fletam ca. 9.

In ſo much as *William de la Pole* Duke of *Suffolk* was in the Reign of King *Henry* the ſixth accuſed amongſt other things by the Commons in Parliament that he had ſought to introduce the Civil Law.

ro: parl 28. H, 6. m. 19 & ab inde uſque 47.

And the great Cardinal *Wolſey* was in the Reign of King *Henery* the eight indicted or informed againſt, *quod ipſe intendebat finaliter antiquiſſimas Anglicanas leges penitus ſubvertere & enervare in univerſum & hoc Regnum Angliæ & ejuſdem Regni populum legibus Imperialibus dict. legibus Civilibus & earundem legum canonibus ſubjugare.*

Trin. 23. H. 8. coram rege.

And King *James* coming from a Kingdom where thoſe Laws were much in uſe, and ſeemed to have ſome inclination to introduce or intermingle ſome part of it with our Common Laws, did notwithſtanding forbear to do it, acknowledging that the *Civil Law was not applicable to this government, or fit for it.*

King James his Speech in the Star Chamber.

And our Innovators that have been ſo willing to intermingle with their Syſtem that part of the Civil Law, which in the caſes of contumacy did allowe *a miſſio bonorum* repleuiſable as aforeſaid, may upon a further ſearch and enquiry ſatisfie themſelves and others that for the expedition of Juſtice put on and perſwaded by the increaſe of trade and inſolvency of debtors the *Cæſarean* or Civil Law hath long ago forſaken their courſe of granting judgments for not appearing & *miſſionem*

bonorum

rum and Seisure, and found the *Citatio realis captura & incarceratio*, to be the more ready and less prejudicial way of compelling debtors or Defendants to appear in judgment.

For certainly to inforce, perswade or give a libertie to the people in their Law Suits and concernments depending thereupon to circulate, when they may go a more easy and less expensive way, nearer, more streight and better conducing to their honest ends, will be but to vex and tire both Plaintiffs and defendants, and multiply their charges.

When to draw and prepare the declarations which in Debt and common Actions were until the fourteenth year of the Reign of King *James* to be entred by the Filacers, and ought yet, if the cause or reason of their remitting that ancient part of their imployment do cease, and be taken away, the Plaintiffs will in this new devised expedient for a quick and *Pie-powder* Course of Justice, be put to a charge for the drawing of their Declarations before hand, when it may be there will be no need of them, and to pay for the Copies of them, which in a more regular course after apparances entred, were to be payed for by the Defendants.

And

And to the Trouble and charge of entring judgments and the hazard of the loſs of charges poundage aud other fees payd to Sheriffs and Bayliffs upon execution, or paying of damages where they are wrongfully or not well obtained multitude of *Affidavits, pro & con,* of motions in Court on the one ſide and the other many referrences and reports wagers of non-ſummons, writs of reſtitution, actions on the caſe for non ſummons, or for ſlander or defamation brought for malitious contrivances *cum multis aliis* whichwill increaſe and heighten the Bill of Charges.

And that goods Seized inventaried and ſold by under Sheriffs and Bayliffs at half or leſs value, though it may ſuffice one greedy and mercileſs Creditor, will not be unlikely to defeat another or many others of their more juſt debts and utterly blaſt the Debtor inhis credit by which he might well have ſubſiſted and ſurvived the diſgrace and trouble of ſo furious a proſecution.

And that the long ago trodden path, or way of compelling or bringing men unto judgment or unto Courts of Juſtice, would not ſo frequently be made uſe of in *England,* the way of

Summons

Summons *Pone* and *distress* being not yet altogether forsaken, and disused as it was formerly) for that betwixt the Reigns of *Canutus* a *Danish* King, & the 25 year of the reign of King *Edward* the Third, and for some ages after, there neither could be any, either frequency of arrest, or necessity for it, as there hath been since and is now.

CHAP. III.

The reason and necessity of the more frequent use of Writs of Arrest, and Outlawry then was before the making of the Statute of 25 E. ca. 17.

IN regard that in those former Ages there were more Lands than Tenants, more real Estates, & but little personal, the Trade of the Nation not the fortieth part of what it is now, & so little before the Reign of King *Edward* the third, as those few Merchants that came hither, had Letters of safe conduct granted unto them before they came; and that the Commerce and Trade, which was in King *Edward* the Third's time & long after, was only with the *Esterlings*, and *Hanse* Towns, *Burgundy*, *Aquitaine*, & some *Genoese*, and *Italian* Merchants, (the *Turky*, East and West-*Indy*, and *African* trades not then or long after known or used) Usury so horrid and damnable a Crime as it was, a cause of Excommunication, denyal of Christian Burial, or a

power

power to make a last Will and Testament: the *Friborghs* or *Tythings* in every County so obliged men to an obedience to the Laws, & the publick peace, as every man of the *Tything* or *Freborgh* were bound upon all occasions to bring each other to Justice, & the Nobility, Gentry, & Masters of their numerous Families were to do the like, for all that were *de manu pastu*, or in their service; the Lords of Mannors kept much of their demesnes in their own hands, with great Stocks & Herds of Cattel thereupon, had their Bondmen and Bondwomen in their Families, Villains & Neifes regardant to their Mannors, did let their other Lands for small Rents, and much personal service, as to plow their Land, mow their Grass, make their Hey, reap their Corn, carry in their Harvest & Wood, do a great part of their Husbandry, and sometimes ride with them 600 Abbies and Religious Houses, with their numerous Monks, Fryers, Nuns, and all their Dependants and Servants belonging to them, lived out of the reach of Writs and Proces, and all or most of them and the secular Clergy in above 9600. Parishes, so formidable as they were, as it were exempt from common Proces; and no man durst lay

violent

violent hands upon them, that many thousand Tenants in *Capite* and by Knight service, and the Tenants which did hold their Lands of the Nobility & Gentry, either as free-hold or copy by Lease or at Will, in the times of that great Hospitality, Protection, and Comfort, which they received under them, and the great Veneration, Awe, and respects which they paid unto them, could never find it to be either safe or convenient for them to commence or prosecute any Action or Suit in Law against them, or any of their very numerous Dependants, Friends, Kindred, or Alliances, and there were many thousands which in the Reignes of King *Henry* the 1, *Henry* the 2, *Richard* the 1, King *John*, *Henry* the 3, and *Edward* the first were *Croysadoed* for the wars in the Holy-land and at *Jerusalem*, and thereby claimed and enjoyed a Freedom from any arrests or molestations concerning the payment of their debts, with the many necessary protections given unto such as were imployed in *Servitio Regis*, which the said several Princes & several of their successors, whilst they had so many Provinces in *France*, and wars for the defence of the same, could not deny unto those whose service they made use of, in-

creaſe of people by reaſon of more than formerly frequent marriages of the laicks and the marriages of all our Clergy, which before had been for ſome hundred of years forbidden, could not but adminiſter ſo many occaſions to diſuſe the more ſlow way of the proceſs of ſummons *pone* & *diſtringas*, and make uſe of that more expedite and quicker way of recovery of Debts, or bringing men to juſtice, when in ſo great a change as hath ſince happened in the alteration of the Eſtates, Manners, buſineſs, and trade of the Nation, not only at home, but a broad inward and outward, and that every man could not like a *Snail* carry his houſe upon his head, or be ſure alwaysto be found in it, there could not be a few verygreat and preſſing neceſſities to call for it, eſpecially.

When if all the People of the Nation were numbred, or put into Ranks, there would be,

1. Free-holders.
2. Copy-holders, Leaſe-holders, and ſuch as have an Eſtate only in Tythes, Annuities, or Rent Charges.
3. Men of Eſtate only in Goods.
4. Or of Trade and Credit only.

5. Men

5. Men whose Estates are only in Money at use, be abroad in other mens hands.

6. Or of no Estate but what they carry about with them, or hope for by their Friends, or their Industry, or some future preferment.

7. Such whose Estates depend upon their daily labours, or profits arising thereby, as mechanicks Artificers, Servants, Labourers, and the like.

8. Mariners, and a sort of adventitious people, who have little or no abode, going or coming to or from beyond the Seas, Merchants, Strangers, and the like.

Of all which several sorts of people, the Freeholders and first *Classis* are the only men, who are properly to be summoned, or to be within this new proposed Law, because they have lands & Estates to be known, and thereby summoned, and are to be found with some certainty, but are not the fortieth part of those which have not.

Of the second sort, the Copy-hold Estates, which being very near a fifth part of the Nation, are not extendable or liable to debts, nor can without manifest prejudice to the Lords of the Manors, whose Predecessors or Ancestors did under certain Limitations permit them to enjoy them, be made to be so. Tithes are for

the moſt part not diſtrainable, and may be ſold or compounded for before they be due, Leaſes may be ſurrended or aſſigned, ſo as none ſhall eaſily find the true Proprietor, Annuities or Rent-Charges are not extendable.

The third and fourth ſort, may either convey away their Goods, or have very little of them.

The Eſtate of the fifth, either not to be found out, or hardly to be come at.

And the experience of ſome *Thouſands of years* paſt, and the latter as well as the former Ages, can and will bear witneſs, and record of the uſefulneſs and approbation of the Proces of *Summons pone* and *Diſtreſs*, where the Defendants are Free-holders, & have a viſible Eſtate, and of Arreſt in caſe of *Contumacy* and Contempt of Courts of Juſtice, and ſuſpition of Flight and Inſolvencies.

CHAP. IV.

The Antient uſe as well as neceſſity of the Proces of Arreſt, and outlawry in this and other Nations.

FOr it may be evident to any, who ſhall not too much be led by a cauſleſs prejudice, or an humour of cenſuring that which they do not underſtand, that an attachment upon Bonds do cauſe a manucaption or Bail, and that upon

on

on a *Diſtringas* made thereupon, a manucaption of the Defendants perſon is Returned as well as the iſſues or profits of his Lands or goods, that the words of *Attach* or *Capias*, uſed in the writs, proceſs, and records of our Law, are in many thirgs *Synonimous*, and of one and the ſame ſignification.

And that the procedings in law by proceſs of *Capias* and Arreſt may not at all ſeem to be unwarrantable, cruel, and unjuſt, when precedents and approbation of the like and greater ſeverities are to be found in the ſacred, and always to be believed records of holy Writ, in the old and new Teſtament, as the putt ing the *man in ward that was found gathering of ſticks upon the Sabbath whilſt the Children of Iſreal were in the wilderneſs, becauſe it was not declared* what ſhould be done untohim, and if thy Brother that dwelleth by thee be waxen poor and ſold unto thee, thou ſhalt not *compel him to ſerve as a Bond Servant; and the ſelling of a debtor and taking his Children to be bondmen.*

Numb. 15. v. 32, 33, 34. Levit. 15. v. 39. 2 Reg. 4. 1. & 7.

If thou be ſurety for thy friend, thou art ſnared and taken with the words of thy mouth, that of taking and caſting into Priſon for debt until the utmoſt Farthing was paid, and ſuch or the like coercions

Proverbs. 6. 1. and 2. Mat. 18. v. 25. 26. 27. 28. 29. 30.

coercions to compel men to appear in Courts of Justice and satisfie actions, were long before the Incarnation of our blessed *Saviour* in use amongst the *Athenians* in their Laws. And the *Romans*, those great Masters of Libertie, who having their *Lictores* & *Serjeants* carrying their Rods and Axes before their Magistrates, expressly ordained that *if a man would not or could not come before the Judge, he should give Bail to answer the action.*

Sigonius de Judiciis, cap. 18. 372.

Metellus one of the Tribunes of the People at *Rome* arrested one of the Consuls for taking away his Horse.

Livy lib. 24. The great *Scipio Africanus* being called to accompt for moneys received, and refusing to come to his answer, the Tribunes of the People, those great protectors of their supposed Liberties, urged very hard to have him Arrested, and fetched out of his house in the Country and made to appear.

Livy lib. 38. 1007.

Plutarch in vita Julii Cæsaris. *Julius Cæsar* was inforced to give Bail to his Creditors who were about to stay him when he went *Prætor to Spain.*

Tacit. Annales lib. 2. *Urgulania* a great favorite of *Augusta*, mother of *Tiberius* the Emperour, being summoned by *Piso* in an action of Debt, which she disobeying,

was

was Arreſted, but reſcued and conveyed to *Cæſars* houſe, whereupon a great ſtir and tumult happening, and *Auguſta* her ſelf complaining that ſhe was injured by it, the mony notwithſtanding was afterwards ſent and paid by her; nor was ſuch arreſting of perſons condemned by our Bleſſed *Saviour* when he adviſed Defendants to agree with their adverſaries before they were by them delivered to the Judge, and the Judge deliver them to the officer, and they be caſt into Priſon. Mat. 5. 25.

Thoſe Roman Laws and Cuſtomes being to be allowed for an inducement to our Common Laws to do the like, which never refuſed to take in and borrow from other Nations any thing that might add to its own perfections and excellencies, and could be no ſtrangers unto the Civil and *Cæſarean* Laws brought into *England* about 50 years after *Chriſt*, when the Emperor *Severus* Raigned ſeven years together at *York*, and that great Lawyer *Papinian* as *Prætor* or Lord Chief Juſtice, governed the Civil affairs and Juſtice of this Nation under him, and thoſe Laws continued as a Seminary of many of our Laws & Cuſtoms, as may be demonſtrated for more than three hundred years after. Selden Diſſert ad Fletam 478, 479. & 501.

By

By the Laws of *Ina* a *Saxon* King Raigning here in *England* betwixt the years 712 and 727. made *ſuaſu & inſtituto* of *Cenred* his Father, *Hedda* and *Erkenwald* his Biſhops, *& omnium Senatorum & natu majorum & ſapientum populi ſui in magna ſervorum Dei frequentia*; *if the Plaintiff demanded right to be done unto him by the Judge, and could not obtain it, and the Defendant ſhew no cauſe why he ſhould not give him a Pledge* or Sureties, *the Judg was to be fined thirty ſhillings, and to do him right notwithſtanding within a Week after.*

In Legibus Inæ. 8.

And then there could be no doubt but that he had power to compel him to appear, and to Puniſh his contumacy, for otherwiſe the Judge could not be juſtly fined that had no power to enforce the Defendant to appear before him.

And *if a Pledge were required of him that was accuſed* (which as to the giving of a Pledge or Bail was no leſs then the awarding of a Capias) *and he had not wherewithal to do it before the Suit be determined, another might lay down a Pledge for him, upon condition that he remained with him or in his Power* (which is a moſt antient and cleare example) ſaith that great Anti-

in Legibus Inæ. 63.

quary

Antiquary Sr. *Henry Spelman*) of being Bailed out of Priſon or giving Bail to anſwer the Action. Spel. Gloſſ. in voce Bail 69. & in verb' capital. 140.

By the Laws of King *Edgar* (who Raigned *Anno Dom.* 971.) made *Frequenti ſenatu, every man was to have ſureties who might have him forth coming to do right.* Lamb. Sax. Laws 62.

By the Laws of *Canutus* made *ſapientum conſilio*, who Reigned in Anno Dom. 1031. *no man was to compel another by diſtraining or taking away Pledges to a Suit in another Liberty, unleſs he had thrice required right to be done him within the hundred.* Lamb. Sax. Laws 97. ib. 18. Ex Chron. Jo. Brampton in legibus Canuti. §. 62.

If any one be deſtitute of Friends, and cannot find Pledges, let him be put into Priſon.

In the Hundred Courts, County Courts, Courts Leet & *Baron*, which (ſaith our Learned *Selden*) have a reſemblance of the Cuſtoms of the old *Germans* brought hither by the *Saxons*, the Proceſs are for the moſt part by Summons, Attachment, and diſtreſs, or if upon the Summons a *nihil habet* be returned, that is to ſay, hath nothing whereby he may be Summoned, then a *Capias*. Vide Spelmans Gloſ. in voce Carkanū. Selden. Janus Anglorum 43.

By the Laws of King *Edward* the Confeſſor who Reigned in *Anno Dom.* 1044. which were Lambert Saxon Laws 138.

of ſo high eſteem with the *Engliſh*, that after a commiſſion to find them out by the oaths of twelve men in every County of *England* elected and choſen, they with much a do, *Precibus & ſletibus*, obtained of *William* the *Conqueror* to have them confirmed, and were after ſo exceeding careful not to looſe them, as the obſervation of thoſe Laws, were by an oath afterwards taken by the ſucceeding Kings of *England* at the Coronation, more eſpetially recommended unto them.

Ibid. 149. & 158. ex Chronico Lichfieldenſi.

Cap. 64. Spelmans gloſſ. in verbo Friborge. 297.

Every man that would be accounted a Freeman, ought to be in Pledge, that the Pledges might bring him to Juſtice if he ſhould offend, and if he eſcape, ſuch Pledges ſhould pay what he was Sued for, which (ſaith our Sr. *Henry Spelman* in his Gloſſary reſembles our Frank Pledge) *and let the Hundred and County* (ſay thoſe Laws) *be demanded for him as our Anceſtors have ordained.*

For ſay the ſame King *Edwards* Laws, *it is the greateſt and higheſt ſecurity by which all men and their Eſtates are ſtrongly upheld.*

By the Laws of *William the Conquerour* who confirmed the Laws of King *Edward* the *Confeſſor*, *omnis homo qui voluerit ſe teneri pro libero*

ſit

ſit in plegio ut plegius eum habeat ad Juſtitiam ſi quid offenderit & ſi quisquam talium videant plegii & ſolvant quod Calumpinatum eſt, every man who would live or be accounted as a free holder is to live in frank Pledge, ſo as his Neighbour or Pledge may bring him to Juſtice, if he ſhall offend, and his Pledges (or Neighbour in the Tithing) are to look unto it and pay that which ſhall be demanded of him, and he ſhall be adjudged to Pay. LL. Gulielmi Conqueſtor 64.

By the Laws of *Henry the* 1 made *Concilio Baronum*, he which is ſummon'd to the *Hundred Court, and without any juſt neceſſity refuſeth to come, if he be able let thirty Pence be taken from him, for the firſt and ſecond time* (which ſeemeth to be a forfeit) *and let him be diſtreined by the Hundred, but let him be put to Pledges till the day of Pleading.* In leg. H. 1. cap. 29. Lindenbrog. gloſ. in verbo pulſare.

And he which was brought or compelled by Proceſs before the Judge, for ſo the word *Pulſatus* in that Law of H. 1. was by the Civil Law, and the Laws of the *Longobards* commonly rendred, *might appeal if he ſuſpected his Judges, and appealing might not be detained in Cuſtody.* In leg. H. 1. cap. 5. and in Capital. Car. & Lodovic. Imp. lib. 7. 283. Goldaſtus Tom. 3. Imperial. Conſtitut. 30.

Ranulphus de Glanvil who recorded much of what was the practice of the Courts of Justice in *England* in his time, and was Lord Cheif Justice in the Reign of King *Henry* the 2 when (as he saith in his *proæmio* or Epistle to that Book) the Laws then in use were founded *upon reason and antient Customs, the King willing to be advised, the Judges, men of great Wisdom and Knowledge in the Laws and Customs of the Kingdom, and Justice so faithfully administred, as the great men could not oppress the Poor.*

Glanvil in proæmio.

Writeth, that *if the Defendant appeared not in an Action of Debt, after he was Summoned, an Attachment was awarded and a Distringas as in other Pleas.*

Lib. 10. cap. 3. & 11.

And it was in those times held to be Common Law, that *where a fine was Levied, and that after 3 Essoynes either of the Parties refused performance, tunc remanet in misericordia Regis & salvo attachiabitur quousque securitatem inveniret bonam.*

Ibid. lib. 8. cap. 5.

In the Reign of King *Henry* the 3. (as appeareth by *Bracton* a Judge and learned Lawyer of those times, in his book *delegibus & consuetudinibus Angliæ*, compiled as he saith *ex veteribus Judiciis Justorum* out of ancient records and

and memorials; *if upon the 4th day of the return of the Summons in an Action of Covenant or Treſpaſs, the Defendant appeared not, whether the Summons were returned* or not, an Attachment was awarded. Bracton lib. 5. de Exceptionibus 440. 441.

If he came not then a ſecond Attachment was awarded to put the Defendant to better Pledges or ſecurities.

And if he had not Land which might be taken into the Kings hands, or by which he might be diſtrained, the Sheriff ſhould be commanded *to take his Body* or bring him, and the Pledges were to be *in miſericordia quia ulterius non ſunt ſummonendi*, and if he came not at the day appointed, *ſed malicioſe ſe ſubtraxerit & latitaverit quod Corpus inveniri non poſſit vel forte ſe tranſtulerit extra Comitatum & poteſtatem vicecomitis & vicecomes mandavit quod non fuit inventus in balliva ſua*, then in default of his appearance, three Writs of Diſtringas ſhall be made out one after another, the firſt by all his Lands and Chattels, ſecond by all his Lands and Chattels, *ita quod nec ipſe nec aliquis pro eo nec per ipſum manum apponat ita quod habeat Corpus ejus ad alium diem & ſi tunc non veniret precipiatur vicecomiti quod diſtringat eum per omnes*

terras

terras & Catalla & quod Capiat omnes terras & omnia Catalla sua in manum domini Regis & Capta in manus domini Regis detineat quousque dominus Rex aliud inde preceperit & quod de exitibus eorundem domino Regi respondeat.

And for this kind of proceedings cited a Record in *Michaelmas* Term in the Third year of that Kings reign, which in its use and nature carried along with it a restraint of the Body of the Defendant, for the Sheriff was by the Writ to distrain the defendant, *Ita quod haberet corpus*, and it would be in vain to distrain him who perhaps had a small Estate or profit of his Lands to be destrained betwixt the *Teste* and return of the Writ if the Sheriff did not at the same time restrain or secure his Body to appear before the Justices at the time prefixt, to answer the contempt as well as the Action.

Bracton. lib. 5. cap. 31. 9, 6, and 7.

But saith *Bracton*, if the Plaintiff *post tot & tantas dilationes justiciam non fuerit consecutus* should not after so many delays obtain Justice, what shall be done, for *durum est enim quod placitum suum deserat & infecto negotio desperatus recedat domum*, it would be hard that the Plaintiff should go home in despair, and be able to do nothing; and therefore concludes, that if it be a civil or

perso-

perſonal action, for mony, or upon any contract, it would be good to put the Plaintiff in poſſeſſion of the Defendants goods and Chattels according to the quantity of his demand and ſummon the Defendant at a time limited to appear, and anſwer the Action, at which time if he do appear, he ſhall have his goods and Chattels reſtored unto him, ſo as he anſwer the Action otherwiſe, he ſhall never more be heard concerning his goods and Chattels, *ſed querens extunc verus poſſeſſor efficiretur*, but the Plaintiffs ſhall from thence be reckoned the true owner and poſſeſſor thereof, *ſi autem cum corpus non Inveniatur nec terras habuerit nec Catalla ille de quo queritur iniquum eſſet ſi Juſticia remaneret vel malitia eſſet Impunita*; But if his Body cannot be found, and he hath not any goods or Chattels, it would be unjuſt that Juſtice ſhould be at a ſtand and not go forward, and that the evil actions of men ſhould remain unpuniſhed, and therefore whether the Action was *pecuniaria vel injuriarum*, was in Debt, or for mony or Treſpaſs, the Court was to proceed againſt him by Proceſs of Utlary, *propter contumaciam & inobedientiam factam domino Regi quia nullum majus Crimen quam Contemptus*

temptus & inobedientia omnes enim qui in Regno ſunt obedientes eſſe debent domino Regi & ad pacem ſuam & cum vocati vel ſummoniti per Regem venire contempſerint faciunt ſe ipſos Exleges, for their contempt and diſobedience to the King, becauſe there is no greater Crime then contempt and diſobedience, for all that are in his Kingdom are to be obedient to the King, and obſerve the peace and Juſtice thereof, and being called or Summoned by him, ſhall contemn it or refuſe an obedience thereunto do make themſelves Outlaws.

Bract. l. 5. de Exceptionibus cap. 31. §. 7.

Et ideo Utlagari deberent non tamen ad mortem vel membrorum truncationem ſi poſtea redierent vel intercepti fuerint cum cauſa utlagationis criminalis non exiſtat ſed ad perpetuam priſonam vel Regni abjurationem & a communione omnium aliorum qui ſunt ad pacem domini Regis, and therefore he ought to be Outlawed but is not if he return, or ſhould be taken to be puniſhed by Death, Mutulation or cutting off his Members, in regard that the cauſe of the Utlarie was not Criminal but he is to be commited to perpetual Priſon, or to abjure the Kingdom, be Baniſhed, and forbid the ſociety of all the Kings Subjects.

And

And in thoſe days where a man by **Leaſe** had taken an houſe rendring a certain Rent, *quid* ſaith *Bracton*, what ſhall be done when the Tenant doth not pay his Rent, & *nihil in domibus locatis & conductis inveniatur*, and hath no goods and Chattels, yet howſoever reſolves the queſtion, *recurrendum erit ad corpus conductoris, ſi autem Corpus non inveniatur hoc poterit locator ſuæ imputare negligentiæ vel imperitiæ quod ſibi Cautius non proſpexit*, recourſe is to be had to the Body of the Tenant, and if he be not to be found, the Landlord is to impute it to his own negligence that he did not look better to it. Bracton. lib. 2. cap. 28. §. 1. Fleta. lib. 2. cap. 59.

Cum quis ad warrantum vocatus fuerit Chriſtianus vel Judæus qui terram non tenuerit in feodo quæ capi poſſit in manum domini Regis per quam diſtringi poſſint præcipiatur vicecomiti quod habeat corpora eorum, when any man is vouched to warranty be he Chriſtian or Jew, and hath not Land which may be taken into the Kings hands or by which he may be diſtrained the Sheriff ſhall be commanded to take his Body or bring him. Bracton. lib. 5. de warrant. cap. 6. ſect. 13.

And a Biſhop being Summond in a *quare non admiſit cum non venit nec ſe excuſat per nuntium* Bracton. lib. 4. de aſſiſa. vltimæ. preſentationis cap. 9. ſect. 3.

nec per Essoniatorem attachietur, when he neither comes, nor sends his excuse, nor essoins shall be attached.

Upon a writ awarded to a Bishop to command him to bring before the Kings Justices a Clark or Minister in holy Orders, refusing to find Pledges because he was in holy Orders, and had no lay Fee whereby he might be distrained, if the Bishop did not after a *Summons pone & Distringas*, awarded against himself, cause him to come, the Court did proceed against the Clark upon the contempt, and cause him to be arrested, nor could the Sheriff or his Bayliffs incur any punishment for doing of it; for the execution of the Law saith *Bracton* wrongeth no man.

Bracton de exceptionibus 443.

52. H. 3. cap. 3.

By the Statute of *Marlebridg* made in the 52 year of the Reign of that King, *if any shall not obey or suffer Summons, attachments, or executions of the same according to the Law and customs of the Kingdom they were to be punished.*

Vossius lib. 2. de variis glossem in appendic. 814. Spelmans glossar. in verbo. attachiare.

The word *Attachment* being, saith the learned *Vossius*, derived from a French word to apprehend or detain.

An Attachment is to arrest, force or compel a man denying to come to judgement, saith Sir *Henry Spelman*.

And

And by *Skene* a learned *Scotch* Lawyer is defined to be a certain Bond or Conſtraint of the Law, whereby a Defendant is unwillingly compelled to anſwer in Judgment to the Party complaining. Skeneus indice ad leges Scoticas. 52. H. 3. cap. 23. Regiſter 35.

In the Statute of 52 *Henry* the third, where a *Capias* is given againſt accomptants, it is ſaid they ſhall be *Attached* by their bodies.

An Attachment made for diſobeying a Writ of *prohibition* is in the very form of a *pone*, & the awarding and entry of a *pone* is that the defendant ſhould be Attached. 52. *H.* 3. cap. 23.

And ſaith *Bracton* the courſe, or ſolemnity of Attachments to compel the Defendant to come to the Court to anſwer his contempt, was not ſo always obſerv'd, but in treſpas for the greatneſs of the offence, or in favour of Soldiers that were going to the Wars, or of Merchants or ſuch as required haſte in Actions of Debt (and it is probable that the Actions or Suits of Merchants were moſt commonly of that nature) the Judges granted an *Habeas Corpus* (which to that purpoſe was in effect as much as a *Capias*) whereby the Sheriff was commanded, all delays ſet apart in regard of ſuch haſte and priviledge to bring the Body of Bracton lib. 5. cap. 33.

the Defendant to anſwer the Plaintiff in an Action of Debt or Treſpas as the caſe required, with a Clauſe in the Later end or percloſe of the Writ, that the Sheriff *ſhould be grievouſly amerced if he refuſe to do it.*

By an Act of Parliament made in the 52 year of the Reign of the aforeſaid King in a Plea of Common cuſtody or guard by reaſon of ward, *if the deforcers came not at the great diſtreſs the Writ was to be renewed twice or thrice within the half year following, and if after the Writ read and proclaimed in open County, the deforceant abſent himſelf and the ſheriff cannot take his Body to bring before the Juſtice, then as a Rebe[illegible] ſhall looſe the Seiſin of his ward.*

52. H. 3. cap. 7.

By the Statute made in the third year of the Reign of King *Edward* the firſt, if any under Sheriff or other do *withhold Priſoners repleviſhable after they have offerd ſufficient ſecurity, he ſhall pay a grievous amerciament to the King*, in which act of Parliament, men committed by the King or his Juſtices, are excepted and declared to be not repleviſhable.

3. E. 1. cap. 1. 5.

By a Statute of the aforeſaid King made in the ſame year (the title of it being againſt the arreſting of men in Liberties) *great men and*

3. E. 1. cap. 34.

their

their Bayliffs (the Kings Officers only excepted, to whom ſpecial authority ſayeth the Statute is given) *were not to attach men paſſing thorough their Juriſdictions with their goods compelling men to anſwer before them upon contracts and covenants*, &c. And the writ of *prohibition* in the *Regiſter* awarded upon that Statute, is *for attaching a man to anſwer upon contracts and covenants.* Regiſter 98.

Britton who wrote his Book by the command of King *Edward* the firſt ſaith, *if any man will complain of a debt under forty ſhillings, let him find Pledges to proſecute his debtor, and if he that is ſued in Treſpas maketh default, let him be diſtrained.* Britton cap. 6. tit. Attachment. and cap 28. tit. Debt.

And that *in an action of debt if there be not a ſufficient diſtreſs the Difendants might be taken by their Bodies, be they Clarks or Laymen.* Tit. Attachment 51. and Debt. 68.

Fleta or whoſoever was the Author of the Book ſo called reciting the then manner of proceedings at law as an old and accuſtomed courſe ſaith, they were by Summons, Attachments and diſtreſs in perſonal actions the entries and awarding thereof upon record being the very ſame with little difference as they are now uſed. Fleta, lib. 2. cap. 62, 65, 67, & 70.

If

Ibidem lib. 2. cap. 60. Sect, 33. 36.

If a debtor had bound himself to be in default of payment distrained by the Steward, and marshal of the Kings house, then upon security given by the Creditor to prosecute, a distringas *was awarded against the debtor, until he found* Pledges, *so as he were within the virge, and if he were personally to be found, was to be attached by his body until he should by Pledges acquit himself, and if he had not Pledges was to be held in Custody until that he answered the Creditor, non tamen in vinculis, or if he found Pledges and after made default, the Pledges were to be amerced and the Defendant arrested and detained, and not be bailed or let loose by Pledges before he had answered.*

Fleta lib. 2. cap. 5. sect 5.

And that not only, *Marescallus sub sua periculo omnes captos infra virgam custodire debet, sed de eis coram Seneschallo respondere & de Judicatis plenam facere executionem*, the Marshal should at his Peril keep all that were taken within the virge, but answer for them before the Steward, and ought to take in execution those against whom Judgment should be given, and the Steward did of course command the Clark that keepeth the *placita Aulæ pro Rege* Rolls and Records of the Kings Court to direct his writ, *Marescallo quod ipsum de quo fit*

quæstio

sine dilatione attachiari faciat, to the Marſhal that he do without delay attach him of whom any complaint ſhould be made.

In the ſeventeenth year of the Reign of King *Edward* the ſecond a *nihil habet* being returned by a Sheriff upon a *Diſtringas* in waſt a *Capias* was awarded by the Juſtices of the Court of *Common Pleas* againſt the defendant. 17. E. 2.

And that if a Sheriff return upon a *pone* a *Tarde* that the VVrit came ſo late unto him as he could not execute it, and it be averred that the VVrit came time enough, or that the Party was preſent and might be attached the Sheriff was to be amerced. Fleta lib. 2. de maliciis Vicecom. obviam. cap. 67. Mirrour of juſtice. 79 regiſter. 267.

Perſonal Actions, ſaith the *Mirrour of Juſtice*, (ſo much admired by Sir. *Edward Coke*) have their introductions by Attachments of their Bodies, real by Summons and mixt actions.

By Summons and after by Attachment in perſonal Actions. And in the ſame Kings Reign if a Religious man Profeſſed, had forſaken the houſe and become vagrant, a VVrit upon a Cerificate of the Abbot or Prior iſſued out of the Chancery to the Sheriff to take him. 20. E. 2. Regiſter: 267.

In the eight year of the Reign of King *Edward* the third *preſentatio facta fuit apud Lincolne*

contra

contra Thomam de Carleton ſub Vicecomitem Indictatum de extorſionibus & aliis malefactis & inter alia quod mittit homines arreſtatos pro debitis in gaſtulum ſtrictum & fetidum inter latrones quouſque finem fecerint cum illo pro deliberatione ſua extra, &c. Contra formam ſtatuti & plurima alia pro quibus fecit finem cum Rege & poſtea pardonatur per breve domini Regis eo quod invenit Regi in guerra ſua Scotiæ tres homines armatos & duos Hobelarios Thomas de Carleton under Sheriff of the county of *Lincolne* was indicted at *Lincoln* for ſeveral Extortions and Miſdemeanors, and amongſt other things, for that he did put ſuch as were Priſoners and arreſted for Debt in a cloſe and loathſom Priſon amongſt Theeves until they gave him mony for their better accomodation, againſt the form of the Statute, and did commit many other Miſdemeanours, for which he paid a Fine to the King, and was pardoned for that he furniſhed the King in his Wars in *Scotland* with three armed men and two Hoblers or common Soldiers.

8 E. 3. coram rege. Rot. 24.

By an Act of Parliament made in the 18 year of the Reign of the ſame King a *Capias* is to be awarded againſt ſuch as not having wherewithal to live do refuſe to ſerve.

Statute of Laborers 18. E. 3.

22. *Ed.* 3. It was held for Law, that upon a Judgment obtained for Debt or Damages, the Body of the Defendant might be taken in execution, and by the opinion of *Thorpe* and *Basset* Judges where conusance of Pleas is granted, there are also granted all things necessary unto it, as to proceed by way of *Capias*, *Distresse*, &c. Lib. Assis. 22. Ed. 3. 61. Br. Conusans 33.

And it was in those times agreed to be Law *that the Judges have Power by Word of Mouth to command a Defendant to be Attached*, and that *he that Bailed a man might by the Law, without Processe, Arrest or take the partie Bailed, and bring him into the Court.* 22. Assis. 43. Brook tit. execution 79.

All which put together and brought to a due consideration, with the small or no difference, which is betwixt a *Pone* and a *Capias*, as to the Attaching and Compelling of Defendants to appear in the *Tenor*, and antiently practised, and yet intended use of it may be enough to Rescue us from the imputation of Error or presumption, if *pace tanti viri*, we shall take that which hath been said in Sir. *Will. Herberts* case by Sir. *Edward Coke* in his third Reports that *the Body of a Defendant in an Action of debt was not subject or lyable to an execution before the* Statute Coke l. 3. relat. Sir *William Herberts* Case 25. Ed. 3. cap. 17.

Statute made in the 25th year of the Reign of King *Edward* the third, to be no more than an opinion built upon a great miſtake, for that Statute was not made only to give Proceſs of Arreſt by *Capias* upon a *nihil habet* or *non eſt Inventus* upon a *Pone* or a *nihil habet* or *non eſt Inventus* returned upon a *Diſtringas* by a Sheriff, becauſe it was ſo before by the Common Law of *England* (it being altogether improbable that thoſe who had Lands or any viſible Eſtate in Goods or Chattels were before the making of that Statute always Reſident, or did never hide or abſent themſelves for Debt or ſome other Actions, to avoid a *Summons* or ſome Arreſt or compulſory way to bring them into Courts of Juſtice to anſwer and give ſatisfaction unto ſuch as had cauſe to complain of them, or that thoſe who had no Lands or Goods were always to be free and exempted from any reſtraint or arreſt of their Bodys upon actions of Debt or for any other matters commenced againſt them.

But was intended only to have Proceſs to the *Exigend* and Utlary, (which could not be without a Writ of *Capias*) in Actions of Debt, detinue of Chattels, and taking of Beaſts, *per Capias*

pias & Exigend ſelon retourne du vicecount come home uſe en breifs daccompt, by *Capias* and *Exigend*, according to the return of the Sheriff, as was uſed in Writs of accompt, and being at the petition of the Commons in Parliament *priont les Commons*, the King, as the record it ſelf witneſſeth, did anſwer, *Il pleſe ou Roy que ainſi ſoit & quil ſoit mys en Eſtatut*, it pleaſeth the King that it ſhould be ſo, and that it be put or formed into a Statute. Ro. part. 25. E. 3.

And the reaſon of that petition of the Commons in Parliament to the King which introduced and procured that Act of Parliament, (many Acts of Parliament and good Laws in the former Ages being uſher'd in, and obtained by the Petitions of the Commons in Parliament to their King and Sovereign,) may in all probability ſeem to be, for that they did not think either the former Proceſs of the Law by Summons, Pone Diſtringas or Capias to be ſevere or ſufficiently coercive, or ſo powerful to bring a Defendant to Juſtice, as the fear of an Utlary, which in the Saxons times were ſo Terrible as he that was outlawed was accompted to be a *Friendleſs* or *Lawleſs* man and was afterwards ſo formidable to thoſe, Bracton lib. 3. cap. 13.

that by the contempt of the Laws incurred in the forfeiture of their Liberties, Goods, Chattels, Profits of their Lands, and Benefits of the Laws, as it might well be believed every man would be careful to avoid so great a danger and trouble.

And therefore in the eighteenth year of the Reign of that King, being but seven years before the making of that Statute, it was deemed to be for the good of the People to have it declared by Act of Parliament in what cases process of *Exigend* and Utlary should be, that is to say, against such *as received the Kings Wool or Mony, and detained it, such as transported Wool, not Cocquetted or without Custom, against Conspirators and Confederates of quarrels such as commited Ryots and brought in false mony, if they could not be found or brought in by Attachment or Distress, and not against any other.*

And by another Statute of the same year *no exigend was to be granted* in trespass *but where it was for breach of the Peace*, and at this day notwithstanding the Statute of 25. E. 3. *ca.* 17. no Writ of *Capias* can be made without a *nihil habet* returned, nor could a *Capias* in accompt be otherwise made before the making of that

Statute

Statute, nor can be ſince without a *nihil habet* returned by the Sheriffe, unleſs the Court ſhould by their coercive power of puniſhing contempts and contumacy think fit to do it, as is now done by Attachments in Chancery upon a Defendants not appearing, and was long before that Statute done by the Judges of our Courts of Common Law, for not obeying *prohibitions* or VVrits Commanding the not Impanelling of one above the age of 70 years to be of a Jury, a VVrit to replevin or Bayl a man which was Impriſoned, *upon a moderata miſericordia*, againſt a Steward or Bayliffe of a Manour for amercing too much, againſt a Sheriffe, for not Summoning or miſreturning a Jury (and the like) they being as well enabled to cauſe a Defendant to be attached or arreſted for a default or contempt in refuſing to appear before them as they did uſually before that ſtatute, and do yet award a grand *Cape* againſt the Lands of a Tenant for not appearing in a real Action, make out a *Capias pro fine & Impriſon*, a Defendant for Pleading *non eſt factum* to a Bond or other deed after it is found againſt him, and a *Capias* to arreſt ſuch as ſhall make a Reſcue as they did before that ſtatute, and do yet make

a *Capias* upon a *nihil habet* returned upon an original in accompt when the Statute of *Marlbridge* 52. *H.* 3. *cap.* 23. only gives it upon a *Diſtringas* when the Defendant hath nothing to be diſtrained and as they did before the ſtatute of 25. *E.* 3. *cap.* 17, and yet do in actions of Treſpaſs make a *Capias* upon a *nihil habet* returned inſtead of a *Diſtringas* when the original Writ out of the Chancery is a *Pone* or attachment.

Otherwiſe they cannot do Juſtice to thoſe that complain and their juriſdiction will be uſeleſs, and to no purpoſe ſaith Mr. *Selden*, and therefore where ever there is the one, of neceſſity there muſt be the other, and the Judges ſaith *Glanvil* in *H.* 2. time had power to Puniſh contempts and ſuch as ſhould abſent themſelves.

Oldendorpius in definit. actionum 25. 31. & Selden, de Synedriis in prefat. & 61. & 62.

And had no leſs in the Reign of King *Henry* 3, when it was ſaid by *Bracton*, *ex quo eis commiſſa eſt cauſa ſimpliciter extenditur earum Juriſdictio ad omnia ſine quibus cauſa terminari non poteſt quantum ad judicium & executionem judicii*, when they are commiſſionated to hear a cauſe, their juriſdiction is to be extended unto that without which the cauſe, as to the judgement and execution

Bracton. lib. 3. cap. 1. §. 3.

thereof, cannot be determined, and did not want a coercive power in the Reign of King *Edward* the 1. when a man could not have a VVrit *de homine replegiando* when he is taken by the commandment of the chief Justice, and upon all contempts made to any Courts of Record in disobeying the commandment of the King under his great Seal, the offender is to be fined and imprisoned, for jurisdictions saith the civil Law are maintained and upheld by such kind of coercions, and is no more either as to the point of contumacy or when the defendants have not goods sufficient then is now usually done in the collecting the excise or monthly assessements, when the collectors where no distress can be found, are impowered to take and imprison the Body, and even the *System maker* in the time of the late rebellion when the inclosures of the Law and all that supported or favoured of *Monarchy* were endeavoured to be thrown down, and every discontented or foolish fancy would be a *Legislator*, and busie it self in the alteration and spoiling of our Laws, could not tell how to avoid the allowing of an arrest or *Capias* where the defendant had no visible and certain Estate whereby to be Summoned.

Westminster cap. 15. & F. N. B.

Coke 8. relat. Beechers case 19. E. 3.

And

And with much more which might be alledg'd for the antiquity, legality, rationality, long approbation and usefulness of the Writs and Process of arrest, and Utlary, which have been and are a great part of the power and ancient rights and customs of our Courts of Justice without which they can neither subsist, exercise, maintain or Keep their authorities, or accomplish the design and ends of justice, and their constitution, may inform all those that would not bind or make themselves more than apprentices to those inconsiderate clamours which since that fatal and unhappy year 1641, have been raised by the *mobile & scelestum vulgus*, ignorant and plundering part of the People and their new Fangled devices and designs for the banishment or alteration of our Laws which they but a little before had cryed up and publickly professed to be their birth-right.

And by the Extirpation of Monarchy, Kingly and Church government plow up the Kingdom to their own ungodly advantages and profits, and render it to be in a worse and more barbarous condition then *Wat Tiler*, *Jack Cade* or *Ket* could have brought it unto if their several Rebellions and Clonnery had gained their expected success.

That

That there is nothing to uphold thoſe their reaſonleſs deſires of Innovation.

And that our Fore-fathers were ſo well content with the benefit of that Act of Parliament of 25. *E.* 3. for the proceedings by Writ of *Capias*, and by Proceſs of *Exigend* to the *Utlary*, in *Actions of Debt, detinue of Chattels, and taking of Beaſts*, (for that may appear to be the only deſign and purpoſe of that Statute.)

And did ſo little believe the Proceſs by way of *Capias* and Arreſt, to be any invaſion of their liberties and rights of Freemen, as they did in the ſaid Parliament Petition for, and obtain an Act of Parliament, that *no man might be taken but by Indictment or Preſentment, or by Proces made by Writ orignal at the common Law*, or to be prejudicial unto them or their poſterities and in the 38 year of the Reign of that King.

Although great miſchiefes did as was complained to that King in a Parliament holden in the ſeven and thirtieth year of his Reign *often happen and dayly come, becauſe that Eſcheators Sheriffs and other the Kings Miniſters did ſeiſe the Lands Goods and Chattels of many ſurmiſing that they were Out-Lawed, where they were not becauſe they did beare ſuch names as thoſe that were Out-* 37. *E.* 3. *cap.* 2.

lowed, the benefits of the aforesaid Statute of 25 *E.* 3, for Proceſs of Utlary by VVrits of *Capias* and *Exigend* which was made but two years before did ſo over ballance or other inconveniences as might happen in ſome mens particulars, as the VViſdom of that King and Parliament, could not think it fit to repeal that Statute, or forbid or diſcourage the right uſe of it, but did only ordain that *if any complained, he ſhould in ſuch a caſe have a Writ de Idemptitate nominis as had been in time paſt.*

38. E. 3. cap. 5. And in the 38*th* year of that Kings Reign *whereas many People were grieved and Attached by their body in the City of London at the Suit of the People of the ſame City ſurmiſing to them that they be Debtors, and that they Prove by their Papers whereas they have no Deed or Tally*, It was aſſented *that men may wage their Law, upon Debts due upon ſuch Papers.*

And the Right uſe of that Act of Parliament of 25. *E.* 3. *cap* 17. did from time to time receive its Allowance and Approbation by ſeveral Acts of Parliament made by our Kings and Princes, from the making of that Act until that never to be enough deplored infatuation and unruly Giddineſs of a rebellious part of

the

the Nation betwixt the year 1641, and his Majesties happy return in the year, 1660.

As by an Act of Parliament made in the first year of the Reign of King *Richard* the 2, it was enacted, that *Prisoner upon judgments given in any of the Kings Courtssof Justice should not be suffered to go at large that a fained confession of a Debt due to the King should not delay anothers Execution.* 1 *R.* 2. *cap.* 12. & 15.

And that Priests should not be arrested doing Divine service.

And in the second year of that Kings Reign, beingbut about 27 years after the making of that Statute of 25 *E.* the 3. to proceed to Utlary by way of *Capias* in Actions of Debt, *Robert de Hauley* Esquire being Arrested upon an Action of Debt, and upon his Escape pursued into *Westminstar* Abby Church, where he took Sanctuary, was in a Tumult in the Church, Slain at the High Altar when the Priest was Singing high Mass, and the offence and breach of Priviledg (as it was then pretended to be) complained of in Parliament by the Arch Bishop of *Canterbury* and the rest of the Prelates and Clergy, who prayed that *due Satisfaction and amends might be made of so Horrible a fact,* *Rs.* parl. 2. *R.* 2. *m.* 72, 73, & 74.

It was oppoſed by the Lords and Commons who Vouched records and called to witneſs the Juſtices and others that were *Learned in the Laws* of the Land, *that in the Church of England It hath not been accuſtomed* that the *offenders flying to a Church ought to have Immunity for Debt or Treſpas or other cauſe whatſoever*, except *for crime only, and certain Doctors of Divinity, Canon and Civil Laws* being thereupon examined, *and ſworn before the King himſelf, to ſpeak the plain truth*, ſaid upon mature and ſound deliberation, that in caſe of *Debt account or Treſpaſs where a man is not to looſe Life or Member, no man ought to have Immunity in holy Church*, and ſaid further in very high expreſſions, that, *God ſaving his perfection, and the Pope ſaving his holineſs, nor any King or Prince can grant ſuch a Priveledge, and that if the King ſhould grant ſuch a one, the Church which is and ought to be favoured and nouriſhed, ought not to accept of it, whereof offence or occaſion of offence may ariſe, for it is a Sin and occaſion of offence* (ſaith the Record) *to delay a man willingly from his Debt or the juſt recovery of the ſame.*

And ſo little did that great affray, & complaint of a then Powerful Clergy, for that breach of Priveledge, & the trouble of the King and Parliament

ament therein, perſwade our forefathers to any diſlike of the way of proceedings by way of arreſt, by *Capias* or Utlary thereupon, as at another Parliament holden in the ſame year, *for the avoiding of debtors, withdrawing themſelves and Flying into Places of Churches Priviledged*, It was ordained by the King upon the Petition of the Commons in Parliament, that *in ſuch caſes after the Creditor had brought an Action of debt, and procured a Capias to be thereupon awarded, and the Sheriff returned that he could not take the defendant becauſe of places of Priviledge, another Writ ſhould be made with Proclamation to be made at the gate of ſuch Priviledged place by five Weeks continually every Week once that ſuch perſon render himſelf.* 2 R. 2. cap. 3.

And the Succeeding Kings were ſo careful not to ſuffer particular grievances to diſappoint the effects of good Laws, made for the generality of the People.

As by a Statute made in the firſt year of the Reign of King *Henry* the fifth, it was ordained that *in every original Writ of Actions perſonal upon which an Exigend ſhall be awarded, the names of the defendants and their additions ſhall be mentioned.* 1. H. 5. ca. 5.

And

And by another made in the 7th year of the
7. H. 5. ca. 1. said Kings Reign, upon the Petition of the Commons as the Statute witnesseth, *like proceſs for the common profit of the Realm*, ſaith the preamble of that Statute ſhall be had *in Writs of forging of Charters or evidences by Capias and Exigend as in Treſpaſs.*

By a Statute made in the 23 year of the
23. H. 6. ca. 10. Reign of King *Henry* the ſixth, *Sheriffs ſhall take Bonds ſecurities or ſureties for the appearance of ſuch as be Arreſted, except upon Writs of Execution Capias utlegatum or excommunicatum,*

By a Statute made in the 19th year of the
19. H. 7. ca. 6. Reign of King *Henry* the 7th *becauſe there have been great delays* (ſaith the Preamble of that Act) *like Proceſs is given in Actions of the Caſe as in Actions of Treſpas or debt.*

By an Act of Parliament made in the ſixth
6. H. 8. cap. 4. year of the Reign of King *Henry* the eighth, *Proclamation ſhall be awarded to give notice unto him that dwelling in one County, ſhall be ſued to an Exigend in another.*

By a Statute or Act of Parliament made in
23. H. 8. cap. 14. the three and twentith year of his Reign, *becauſe there are many delays in Actions of Annuity for that Proceſs of Utlary*, ſaith that *Act* doth not lie

like

like, Proceſs was granted by the King in Writs of Annuity as was formerly uſed in accompt.

Writs of *Capias, Exigent* and *Outlawry* were allowed in *Wales* by a Statute made in the 34*th* year of the Reign of the aforeſaid King. 34. *H.* 8. *cap.* 16.

And two ſeveral Statutes, the one made in the 1. year, and the other in the 5*th* year of King *Edward* the 6*th*, taking notice that for want of ſuch Proclamations, many of the perſons Inhabiting in *Wales, Lancaſhire, Cheſhire*, or *Cheſter*, were *without knowledg or cauſe of Suit wrongfully and unjuſtly Outlawed to their utter undoing*, did without abrogating the Right uſe of the proces of Utlary ordain, *that upon every Writ of Exigend againſt any Perſons Inhabiting in every of the ſaid Counties or Places, Proclamations ſhall be made and awarded, directed to the Sheriffs of the ſeveral Counties where the defendants inhabit, do give notice thereof.* 1. *E.* 6. *cap.* 10. 5. *E.* 6. *cap.* 26.

By an Act of Parliament made in the fifth year of the Reign of Queen *Elizabeth*, three ſeveral VVrits of *Capias with Proclamations, with the Penaltie of* 20*l a time ſhall be awarded* againſt an Excommunicate perſon *that cannot be taken by the Sheriff upon the Writ of Capias excommunicatum granted out of the Chancery.* 5. *Eliz. cap.* 26.

By

By a Statute made in the eighth year of her Reign, *for that many of their malicious minds, and without any juſt cauſe did procure divers of the Queens Subjects to be Arreſted, it was enacted that the defendants ſhould recover their coſts and damages where the Plaintiffs doe delay, diſcontinue their Suits or be non Suited.*

8. Eliz. cap. 2.

And by an Act of Parliament made in the one and thirtieth year of her Reign, it was *for the avoiding of ſecret outlawries in Actions perſonal, ordained, that upon every Writ of exigend awarded againſt any perſon, three ſeveral Proclamations ſhall be made by the Sheriff of the County or place where ſuch defendant inhabiteth, firſt at the County Court, the ſecond at the Quarter Seſſions, and the third at the Church dore of the Pariſh where ſuch Perſon inhabiteth.*

31. Eliz. cap. 3.

And the like to be done in the County *Palatine* of *Durham* where as the Statute ſaith *many men have without knowledge been outlawed, to their utter undoings, if ſome ſpeedy remedy be the ſooner provided* but thoſe miſdoings were not *not* then accompted to be ſufficient to bereave a Multitude or far greater number of the people, of the good which they received by the proceſs of Utlary.

Ibidem. cap. 6.

By

By an Act of Parliament made in the three and fortieth year of Her Reign, *the procurers or makers of any Warrant to Summon, Arreſt, or Attach any Perſon by his or their Body or Goods to appear in any of her Majeſties Courts of Juſtice not having before an original Writ or Proceſs to warrant the ſame, ſhall be Impriſoned without Bail or mainprize, and not be delivered until he ſhall have paid* 10l. *to the Partie grieved, beſides his Coſts and Damages, and* 20l. *a peice for their offences to her Majeſtie, her Heirs and Succeſſors.* 43. Eliz. cap. 6.

By an Act of Parliament made in the 21th year of the Reign of King *James, the Lands of him which Dieth in Execution, ſhall be Chargeable with the Debt.* 21. Jac. cap. 24.

By an Act of Parliament made in the 13th year of his now Majeſties reign reciting, that *by the antient and fundamental Laws of this Realm, where any Perſon is Sued, Impleaded, or Arreſted by any Writ, Bill, or Proces, Iſſuing out of any his Majeſties Courts of Record at* Weſtminſter, *at the Suit of any Common Perſon, the true cauſe of Action ought to be ſet forth, and particularly expreſſed;* It was ordained, that *where the true cauſe or certainty of Action is not expreſſed, in any ſuch VVrit, Bill, or Proceſs, the Sheriff ſhall take no greater Bond for* 13. Car. 2.

any

any Defendants Appearance thereunto, then of the Penalty of Forty Pounds.

Which in such a length of time and approbation of many Statutes and Acts of Parliament, and of our Judges in Courts of Justice, in the awarding and allowance of such kind of Writs and Process, which as the Rolls and Records of the Court of Common Pleas in the 17*th* year of the Reign of *Edw.* the 2, and of former Kings Reigns do declare, were not granted of Course (as for the ease of the People they have been in later times, by sworn and experienced officers) but upon grave and deliberate advice, upon Petitions or motions to the Judges, and the names sometimes of the Chief Justice, and at other times of the particular puisne Judge that granted them, mentioned in the latter ends of the Entries thereof might if there had been no *Vestigia* or track of the necessary Process of Arrest, to compel men to appear in Courts of Justice to be found, *a multis retro seculis ex longissima experientia observata*, in almost all the foregoing ages and wisdom of the Auncients, abundantly serve to recal that humour or desire of novel experiments, or imposing or practising upon our Laws and Liberties

Trin. 17. E. 2, in communi Banco & in aliis antiq. Record & Rotulis ejusdem Cur.

ties, and conduct thoſe *Sons of Innovation* to a better obedience and veneration of our Laws, rules of right reaſon, and neceſſity of maintaining the indiſpenſable, Antient, Legal power and Authority of Juſtice, in the bleſſings of that which we have already received, and may hereafter, receive by its due adminiſtration, if we do not give entertainment unto the *wild propoſalls*, of thoſe who in their plenty of *Ignorance*, *Obſtinacy*, and *Intereſt*, would have they *know not what*.

And bring upon the Nation, and themſelves, and poſterities, the many ſad effects and conſequences it will produce, and may give them to underſtand, that having ſuch a ſmall aſſureance of an *Infallibility*, they may do better to ſtop the Carrere of their ſo cauſeleſs prejudice, againſt the Proceſs of *Capias* and Arreſt, and obſerve what their Neighbour and other Nations have adjudged to be very neceſſary and unavoidable in their proceedings in Courts of Juſtice upon perſonal Actions.

Who have not ſo loſt or forſaken the Antient Cuſtomes and Pathes of their Fore-Fathers but that the ſame or very like, what is and hath been ſo long in uſe amongſt us, may be ſeen a-

amongst many of the most civilized of them, and was so early in the World as it seemes, saith *John Oldendorpius* to be deduced from the Laws of God and Nature, Right reason and necessity.

Ic. Oldendorpius de definit. actionum 11. 20. 21.

By an Edict or Law of *Theodorico*, King or Emperour of the *Gothes*, made in the year of our Lord God 497, Arrests of the Bodies of Defendants, were allowed to be made.

Goldastus constitutiones Imperial. 18. *cap.* 8.

By a Constitution of *Charlemaigne*, whose dominion extended over the greatest part of *Europe*, made about the year of our Lord God 780. the houses of those that with-held their Tythes were to be seized, and if they opposed and presumed to enter again of their own authority, the Ministers of the Common-wealth were to put them in Custody.

Spelman Glossar. in verbo Hinfare.

In the *Empire* of *Germany*, more especially in famous Mart Towns, and Imperial Cities, as *Frankford* upon the *Mayn*, *Lipsich*, *Norinberg*, &c. (saith *John Koppen* in *Rangensdorff*, Chief Councellor to the Elector of *Brandenburgh*) Arrests for Debt are frequently made, and the Debtors Imprisoned, and this saith he, *a vetustissimis Romanorum legibus originem sumpsit*, had

Jo. Koppen. in decision questionum in Germania qu. 35. §. 1. 2. 4. & qu. 29. §. 10. & 15.

had it's begining from the moſt Antient *Roman* Laws, a Clark in holy Orders, and likely to run away, a Debtor that hath no Land, or is likely to remove away his Goods, is a Prodigal, or contumatious, refuſeth to appear, and cannot give Sureties, may by the Laws and practice of thoſe Countries, *& jure Saxonico*, be Arreſted and taken.

In *Poland*, he that will not or cannot give Bayl to anſwer the Action, is arreſted. Cromerus lib. 2. de Polonia.

In *Ruſſia* when any of the officers of the Courts of juſtice, do come to a Defendant, if he give not Bayl, he is to be detained in Cuſtody. Commentar. de Ruſſia.

In *Geneva* upon a return or Certificate, that the Defendant hath nothing, he is arreſted. Laws of Geneva Printed at London, 1562.

The like courſe of Arreſt and compelling of men to appear in Judgment, is and hath been long ago practiſed in the Kingdomes of *France*, *Spain*, *Hungary*, *Scotland*, and in the Dukedom of *Savoy*, and many other Places, who do think that they have a great deal of Liberty, as the Common-wealths of *Venice*, *Holland*, and the united Provinces, the *Hanſe* Towns, *Switzerland* and *Genoa*, &c. Molin. in conſuetud. Paris. tit. 2. gl. 1. Num. 3. Bibliotheque ou Threſor. du droit. du France. tit. Arreſts 326.

And in New *England*, whether the ignorant and miſtaken conſciences of many, having carried diverſe Gonzale de Suarez. de pas 2s part. Tom. 81.

diverſe of our People where they would, make their own Laws, and be independent of the government of this Kingdom from whence they came they do notwithſtanding.

decret. Uladiſlai Regis Hungariæ Anno. 1492. Art. 91.

Not want it, where *for the better expedition, and execution of Juſtice* (as the words of their Laws are,) they do ordain that every Court of Juſtice, ſhall have Miniſters of Juſtice to attach and fetch, and ſet Perſons before the Magiſtrates.

Edicts. & Arreſts. de Sivoy. An. 1574.

And is likewiſe in practice in ſome Nations that are more remote, and have only the light of Nature, and ſome information of Reaſon to

Laws of Genoa Printed at Milan. 1576.

direct them, as namely in the Region of *Mallabor*, where if the Debtor do break his Day with

Laws of New-England Printed at *London.* 1641.

his Creditor, and often diſappointed him, he went to the principal of the *Bramenes*, of whom receiving a Rod, he goeth to the Debtor, and making a Circle about him, chargeth him in the name of the King and the *Bramene*, not to depart from thence until he hath ſatisfied the Debt, and if he do not, he muſt Starve in the

Purchas Pilgrimage lib. 5.

place, for if he Depart, the King will cauſe him to be executed.

And when that which hath been here ſo truly and Irrefragably aſſerted, will never deſerve

to

to be thought a *Postulatum* conclusion or principle begged, but is *de facto apud multos & de jure apud omnes*, so done and practised, by very many Nations, and of right ought to be by all.

CHAP. V.

The Process of Arrest and Utlary, are a more gentle way of compelling Men to pay their Debts, or to appear in Courts of Justice then that which was formerly used.

EVery man that would entitle himself to any reason, or not wilfully divorce or separate himself from the company thereof, and shut out that light which the wisdom and practice of former Ages have tendred unto him, may give way to so many cogent Arguments and acknowledge, the course and way of our process of Arrest and Utlaries, to be a more gentle way of proceeding, in the doing and Execution of Justice, then that of the *forty stripes*, which in the most righteous Laws of God were in Deut. 25. v. 1. & 3.

cases of controversie betwixt men, ordered in none of the greatest sort of offences, to be given to him who was condemned by the Judges, then the taking away of the two Sons of the Widdow, of one of the Sons of the Prophets by a Creditor, to be Bondmen for their Fathers Debt, the selling of a Debtor and his Wife and Children, and all that he had by the Creditor in use amongst the *Jews*; or taking them by the Throat, saying, Pay me what thou owest, and Haling him to the Judge, who cast him into Prison, mentioned by our Saviour *Christ*; the cutting of Insolvent Debtors in pieces, after a Sentence and small limitation of time; and giving every Creditor a piece learnt by the *Romans*, from the *Athenian* and *Grecian* Laws, but never put in practice for the cruelty thereof; the *Nexus* and taking of Debtors prisoners by the Creditors own authority (until they had by some good Laws been taught a less fierce, and cruel way of recovering their Debts) and keeping them bound in Chaines in their own houses; the making the Children Slaves for their Fathers Debts, by the People of *Asia*, that large Quarter or fourth

2 Reg. 4. v. 1. & 2. Matth. 18. v. 25.

Gellius noct. Attic.

Livy.

Plutarch in vita Luculli & Solonis Dionisius Halicar. lib. 6.

Part

Part of the World; and the like Customes used by the *Athenians* and *Romans*, or the usage of the *Longobards* who, if the Debt were not payed after the third time demanded, did suffer the Creditor to pawn the Debtors Body, or take by order of the King or Judge, his Men or Maid-servants Prisoners; or that of the *Wisigothes*, the *Spaniards* Ancestors, whose Laws ordained a *penalty of three pounds of Gold to be payed by the Offendor, or such as contemned the Kings Command and Authority, and if he were not able to pay it, was to endure Quinquaginta Ictus Flagellorum, Fifty lashes with a whip*; or of the *Russians* beating with Cudgels their Insolvent Debtors, upon the Calves of their legs, and bottoms of their feet; or if the Debtor be poor, set him under a Crucifix, and cause the Plaintif to take his Oath over his head, that his Debt is true, which being done the Duke causeth the Defendant to be brought home to his house, putteth him to labour, or letteth him to hire until he be redeemed.

LL. Longobard tit. 21. §. 1. 7, 8.

LL. Wisigothorum in Lindenbrogio l. 2. cap. 88.

Fletcher de Republica Moscoviæ.

Or of the *Ægyptians* in not permitting the bodies of the Debtors to be buried, but to

Quenſtadt de Sepultur. veter. Valer. Maxim. l. 5. cap. 4. & Covarruvias de variorum Reſolut.

be left as a pawn to their Creditors, *Donec Heredes Æs alienum integrè ſolverent*, Until their Heirs or Executors paid the Debt, and was ſo imitated by the *Athenians*, the wiſeſt Nation of the learned *Greece*, as the brave *Cimon* was conſtrained to yield himſelf a Priſoner in Chains, as the manner then was, to the end that his glorious Father *Miltiades* (who had deſerved better of them) dying a Priſoner for a Debt owing to the Publicque, might be buried; And by the *Gothes*, and ſome other Nations under their large Dominions, until by a Conſtitution of *Theoderico*, King of the *Gothes*, and ſome other Princes, *Tanquam inhumanum & erudelitati proximum*; It was prohibited under ſevere penalties (which in theſe times uſed to be more then threatned) as Inhumane and too neat bordering upon cruelty, and is notwithſtanding yet at this day uſed in ſome parts of the Lower *Germany*, as *Holſtein*, *Brunſwich*, and *Holland* (that great Monopoly as they think of Liberty, when they do but dream of it) for Debts or Money owing to private Perſons.

Goldaſtus Conſtitut. Imperial.

Philip Albert Orthen de Regali Conducendi Jure, cap. 4. 9, 13. Impreſſ. Norimbergæ Anno 1672.

Or not ſo rigid or uncompaſſionate, as

the

the way of proſecution for Debts is, in the vaſt Empire of the Great *Mogul*, where if the Debtor do not pay his Creditor, according to the time limited by the Judge, he is ſeverely whipped, and his Wife and Children ſold for Slaves by the Creditor; or the Merciles manner of poinding Horning, or Outlary, and Caption for Debts, upon ſhort and almoſt impoſſible prefixions uſed in *Scotland*. Skeneus Reg. Majeſt. & Craig. de Feudis.

When our Writs of *Pone* or *Attachment*, by the favor and unwillingneſs of Sheriffs, to execute the extremities and rigour of Writs, and Proces of Law, or their kindneſs procured by ſome other perſwaſions of rewards or power; were in the moderation of our Laws, and Courts of Juſtice; which *Canutus* by his Laws deſired to be *ad Divinam Clementiam temperata*, not ſo exactly executed, or the Defendant enforced to put in real Pledges and Security, as formerly. LL. Canuti §. 2.

And the *Diſtringaſſes* have only ſmall, or little iſſues returned upon them, nothing near amounting to the Rents and Proffits of the Lands, Goods, and Chattels of the Partie proſecuted, betwixt the *teſte* and return of the Writ.

And

And the Writs of *Capias*, when made out are very often eaſily ſatisfied by an Attorneys undertaking, to appear to the Action, or if Bond be given to the Sheriffs by two Sureties, for the Defendants appearance, are not one in many hundreds enforced to give ſpecial Bail afterwards; and if the demand in the Writ ſpecified, be under 20. pounds, are by the Rules and Cuſtom of the Court of Common Pleas not to be Inſiſted upon, or if above, not at all in the Caſe of Defendants, being Executors or Adminiſtrators; and if the Defendant, for want of Bail for his appearance, do continue in Priſon three terms, and no *habeas Corpus* be brought, or declaration given, or further proſecution made, he is to be delivered by a Writ of *Superſedeas*, made of courſe upon the apparance to the action only, without any ſpecial Bail put in before a Judge, or Bond given to the Sheriff; and where ſpecial Bail is very ſeldom given, it is but that if Judgment be obtained againſt the Defendant, he ſhall render his body to Priſon, or ſatisfie the condemnation.

Our Writs of Arreſt *ad reſpondendum*, being

ing *ad Cautionem & cuſtodiam non ad pœnam*, but to enforce a gage or pledge, or to detain, or put a Debtor or Defendant into the Cuſtody of the Law, to the end he may give Bail *Judicatum ſolvere*, to abide the Judgment of the Court, or if no Bail be required to appear to the Action.

And the Proces of Utlary, which although they were not ordinarily uſed in Actions of debt, before the making of the Statute of 25 *E.* 3. was notwithſtanding in caſes of treſpas for breach of the Peace, and for Contumacy, and Contempts in not appearing warranted, by the Laws of King *Edgar*, *Cannutus*, *Edward* the Confeſſor, and the practiſe of our *Saxon* Anceſtors borrowed, and deduced from the Ancient Cuſtoms of other Nations, is not now ſo dreadful as it was in former Ages, when, as *Bracton*, and *Stamford* do agree, the Partie outlawed did forfeit *Patriam*, *Amicos*, *& omnia terras & tenementa bona & Catalla ſua*, all that he could entitle himſelf unto, was out of the protection of the King and his Laws, and could not bring any action, until he had rendered himſelf to Priſon, obtained his Char-

LL. Edgari 11. & 67. LL. Canuti 30 & 61. LL. Edwardi Confeſſor 45. Bracton de Corona cap. 11. Stamford lib. 3. cap. 35. tit. forfeiture.

ter

ter of Pardon, brought his Writ of *Error*, and given Bail to anſwer the Action; but may now without Bail, unleſs ſpecially required, be admitted to reverſe the Utlary before Judgment, upon defect of Proclamation only, or ſome ſmall Error without a Writ of Error, or the Record certified into the Court of Kings *Bench*, or Errors aſſigned, with other the many troubles and charges which that way produced.

The Plaintifs for fear of obſtructing, or narrowing the wayes of Juſtice, are not put as they were anciently to find real Sureties, to proſecute and make good their actions, or to pay a Fine to the King, if they do not as our Laws do intend they ſhould, or to make Oath of their debts, or *de non calumniando*, that the Action is not proſecuted in malice, or upon ſiniſter ends as the Civil Law enjoyned.

Weſtminſter 2. c. 18. And the Statute of *Weſtminſter*, the ſecond doth in Writs of Execution, againſt the Goods and Chattels of a Defendant, except *Boves & Affras de Carucâ ſuâ*, Oxen and Horſes of Husbandry, and the Writ imports as much in the tenor of it, the Judges

ges do without any Inquiſition or proof, that there were not other goods ſufficient to ſatisfie the Execution, permit for the Creditors more ſpeedy attaining to his ſatisfaction, all the goods to be taken in Execution, which in more Ancient times was ſo unuſual, as a Defendant hath brought his Action againſt the Sheriff; and the Plaintif for taking them in Execution, when there was other perſonal Eſtate ſufficient: And do alſo ſuffer the Plaintiff to proſecute the Sureties upon a Bond, when the Principal hath not been ſued, and was ſufficient to pay the Debt or dammage, which by the former courſe, and practiſe of the Law was not allowed.

And our Writs of *Exigent*, and *Outlary* were truly, and properly only to be made uſe of, where the Defendant refuſeth to appear in contempt of a Court of Juſtice, and the Proces thereof is fugitive, or incertain where to be found, taken, or arreſted, hath no viſible or certain Eſtate, or lurketh in ſome Liberty (of which there are many in *England* and *Wales*, where the Kings ordinary Writs, and Proces do not run, or have

any power or force) and a *Capias utlegatum* carrieth with it, in the ſame Writ a *Non omittas propter aliquam libertatem*, and impowereth the Sheriff to enter into any Liberty, and arreſt the Defendant, and by a ſpecial *Capias utlegatum* to ſeize, and take at the ſame time all the Defendants Lands, Goods, Chattels, and Eſtate into the Kings hands, as forfeited for his Contempt; and that ſeiſure transferred into the Court of *Exchequer*, bringeth the Plaintif an advantage, to take a Leaſe of the King of the Lands ſo ſeiſed, at a very low rent, until the Defendant purge himſelf of the Contempt, reverſe the Outlary, give Bail, and appear unto the Action; which being ſo conſonant to the Outlawries *Bannes*, and proſcriptions of *Germany*, and other Nations, Kings, and Princes in the like Caſes, to preſerve their own Authority in that of their Courts of Juſtice, and requiring ſome ſeverity, and a more then ordinary Proles hath been all the means, which without force and violence, and a greater diſturbance of the People our Laws, and a long Cuſtom, and uſage of time have hitherto preſcribed,

or

can contrive to bring unwilling Men to Judgment.

CHAP. VI.

The delayes, and inconveniences of the Proces of Summons, Pone, *and* Diſtringas *were a great, if not the only cauſe of the diſuſe thereof.*

FOr the way and Courſe of *Summons*, *Pone*, and *Diſtringas*, ſo much in uſe before that Statute of 25 *E.* 3. was unto Plaintifs as full of delayes as they were of increaſe of Charges, and trouble which a view of the old Records of the Court of Common-Pleas, before the making of that Statute, by the many Writs of *Alias*, and *Pluries Diſtringas* with iſſues, forfeited and returned upon them, occaſioning a great profit to the King, and leſs to the Subjects, and the many Writs of *teſtatum Diſtringas* made into other Countries, where the Plaintifs averred that the Defendants had Lands, and Eſtate ſufficient, and Writs of Aver-

ment and Enquiry, made out upon too ſmall iſſues returned, directed unto the Juſtices of Aſſize, to certifie if there might not be more iſſues returned; and ſuch a Writ of Enquiry to be executed in the *Lent*, or *Summer* Vacations, could not but cauſe a more long, chargeable, and troubleſome delay, to get better iſſues to be returned, may help to atteſt the more neceſſary, and better uſe of the Proces of *Capias* and Arreſt and that Writs of Exigent and Outlawry, will in the Caſes aforeſaid, *propter inevitabilem neceſſitatem* be everlaſtingly neceſſary; eſpecially when in the ſame Parliament of 25 E. 3. wherein Proces of Outlawry in Actions of Debt were granted, a great complaint was made, that the *Steward* and *Marſhal* of the Kings Houſe, or their Deputies did upon Actions attach, and diſtrain men by ten Marks of their Goods one day, and by as much the next day, to their utter ruine and undoing.

Rot. Parl. & Petitions in Parl. 25 E. 3.

And the Goods and Chattels muſt be ſuch as the Sheriff can be confident, the Defendant hath a property in, for otherwiſe he will require Bonds, or Sureties of the Plaintif,

to

to be ſaved harmleſs; and where the Eſtate doth lye only in Goods and Chattels within an Houſe, the Sheriff may in a Town or City, where are many Inmates or Lodgers, and three or four ſometimes in an Houſe together, be not a little puzled, to know into whoſe Room he ſhall enter, or upon whoſe property he ſeizeth, and his Serjeants or Bailifs may be afraid to enter and diſtrain, for fear of Actions to be brought againſt them: And many of the Goods and Chattels, may be ſuch as the Law doth not allow to be diſtrained; or if the Defendant hath Lands & a *Diſtringas* iſſueth out againſt him, and hath no Stock or Cattle upon it, or they ſhall be beforehand eloigned, or driven away (as it may often happen) there will be little profit made of the Land, betwixt the *Teſte* and return of the Writ, eſpecially if it come to be executed in the Winter ſeaſon, or that much of it is in Leaſe: And then he muſt do as well as he may to get Tenants, whereby to raiſe the profits, or let it lye for Crows and Treſpaſſers to raiſe it for him, for Tenants (ſuch as wiſh well to the Defendant, or are depending upon

upon him, being not likely to be willing to take or Rent it at all) will be hardly got; and those that do malice or maligne him, will (if they may not have it at cheap Rates) be unwilling to adventure the hazard of actions of trespas, or other inconveniences for a small term or time, which can be no longer then until the Defendant shall appear, or make his peace with the Plaintif; or if the Plaintif should himself take a Leale of it, for such a short term from the King, if he may not have it at a very ealie rate, he will be as little a gainer as the Defendant by it, and as far from the recovery of his Debt, as those that had lately Writs of *Distringas*, against the Company of the *Vintners* or *Grocers*, in Actions of Debt for very great sums of Money, whose Lands though it was well known they had a great proportion of them, belonging to their several Companies, were so invisible as the Sheriffs or the Bailifs of the County where they lay could not discover, or would not tell where to find them.

And if they did or could find any Lands, would to avoid the trouble of an Actual Execution of the Writs of *Distringas*, where-

upon

upon they were allowed no pondage Fees, return small or petit Issues, and but such as they could easily answer, take off, or procure an Indempnity for, to save themselves harmless.

Or if a Tenant be himself in Debt, and be distrained, and his Stock taken away, he is sure enough to be undone, and his Landlord not a little prejudiced also by it, when for want of Stock, he cannot manage, or hold his Farm any longer, which the Statute of *Westminsten* the 2. made in the 13th Year of the Reign of King *Edward* the First, did as well believe as forefer, when it prohibited the taking in Execution the Cattle and Utensils of Husbandry, now not at all as to that particular obeyed or observed.

And the Writs and Process of *Distringas* will be much more inconvenient, and destructive to Trade and Trades-men, when they become Creditors, or shall be made Defendants, and be distrained by Proces of *Distringas* for Debt, or in any other personal Action, for then such a Defendant may suddenly be ruined in his credit, & not only himself, but ten or 20. of his Creditors suffer not

a little by it: And it may be when all is done, the Action may appear to be but upon some malicious pretence, or upon Covenant, or Action of the Case battery or tresspas, where in no adjudication of the value of the Action can be had before a Trial or Writ to enquire of dammages, and one hundred Pounds worth of Goods may be taken or spoiled, upon an Action of less then so many Shillings, for the Sheriff to have enough will not fail to seize more if he can come at it, then the Demand of the Writ or the Plaintifs suggestion amounts unto, and the Defendants Estate will thereby become ruined and ranked, as far as the greedy, unconscionable, or knavish pretences of a Plaintif (for all are not likely to be conscionable or reasonable) shall carry him unto, and after he shall be thus pulled in pieces, or condemned and executed before he be heard or come to his Trial, or can well know what it is for, will be left afterwards to make himself up as well as he can (which to a Trades-man was never easie) and seek his revenge or remedy, by as many suits in Law or equity, as

him-

himſelf, or his Friends, or neceſſities ſhall put him upon.

And when he hath appeared to the Action, after he hath been undone a great deal more then the Action comes to, cannot eaſily reſtore, or ſo make himſelf up again, as to be in the ſame plight, or condition of Credit which he was in before.

And it is not alſo unuſual to ſome Tradesmen, when they find themſelves ſinking, or to be in any deſperate condition, or likelyhood of breaking, to endeavour more then they ſhould, to be moſt commonly beforehand with their Creditors, make away their Goods and Wares, lodge them in other Mens hands, cover them under ſome ſecret, and never to be diſcovered truſts, and putting as much Money as they can into their Purſes, retire themſelves into ſome Place *incognito*, ſhut up their Shops, and leave little or nothing therein, and aſſoon as they can make it their buſineſs to compound, and give their Creditors for very great Sums of Money owing to them, no better a ſatisfaction then three or four Shillings in the Pound, and keep the overplus for their labours; and a ſetting up

again, which they could not ſo unawares or advantageouſly, to their evil ends, have done or contrived, if they had been arreſted.

All which or many more miſchiefs, and inconveniences happening to that kind of Dilatory Proces, may appear to be no over nicely gueſſed or ſtrained conſequences, if if ſhall be but conſidered what an abundance of hideous, and remediles miſchiefs, and inconveniences, would every day, and long ago have happened to Shop-keepers, and Men of Trade, and Credit in the City of *London*, and the Suburbs thereof, if the Proces iſſuing out of the Courts of *Common Pleas*, and *Kings Bench*, and the Courts of the City of *London*, againſt them had been not to Arreſt Defendants, but to diſtrain, and ſeek after their Goods and Wares, when the property of the Defendants Wares and Goods may be ſo concealed, or diſguiſed by Bills of Sale, fraudulent deeds or contrivances, (the Wares in a Trades-man Shop being many times other Mens, who upon ſome allowance of ſhare, have employed or truſted them to Trade withal) as there would be a neceſſity of Suites in *Chancery*, to diſcover the right Owners.

Many

Many or ſome of which inconveniences, being before the making of that Act of Parliament of 25 of *E* 3. experimented, or well underſtood, or foreſeen, might cauſe our Forefathers to forſake, and diſuſe the former way of *Summons*, *Pone*, and *Diſtringas*, and betake themſelves to the more uſeful, and expedite way of Proces of Arreſt or Outlary, which hath been ſince evidenced, to be much more accommodate to Trade, and the good and benefit in general of the Nation.

And was not denyed to be truth, and reaſon by Mr. *Charles George Cock*, who being ſomething of a Common Lawyer, but nothing at all of a Civil, and advanced in the times of Uſurpation, to be one of the Judges, in the then ſo called Court, for probate of Wills, and granting Adminiſtrations, could in his Book printed in the year 1651, entituled the *Houſhold of God upon Earth*, or an *Eſſay of Chriſtian Government*, dedicated to the Family of God over the whole Earth, but more eſpecially to them of the *Houſhold* of Faith, in the Common-wealth of *England*, after a *Rhapſody*

of Whymsical Propositions for Reformation, and Invectives with ill will enough, against the proceedings in the Courts of Justice, Arrests, and Outlaries, delivered his opinion, concerning the Writs of *Capias* and Arrest, in these words: *That anciently first Goods, then Lands, then liberty was to be seised for Debts, &c. Upon a just and proportionate rule, necessity found wayes to evade, Quære the Goods, and they were others; Quære the Lands, and they were alienes; and to run through the difficulties of all those Trials, the burden was found too great, and therefore the Law of Imprisonment at first by Arrest was brought in.*

Charles George Cock Essay of Christian Government in Anno 1651.

CHAP.

CHAP. VII.

The Writs, and Proces of Arreſt, and Outlary have increaſed, preſerved, and encouraged Trade, better ſecured the Creditors Debts, and made the borrowing of Money more eaſie then it was before.

AND therefore the Proces, and Writs of *Capias*, Arreſt, and Exigent, the latter not being able to ſubſiſt without the former, having been both of them, in their ſeveral kinds, ſo very beneficial and avantagious to the Lawful increaſe of Trade, now almoſt every mans deſire and concernment, and in that and all other matters, as well concerning Debtors as Creditors, ſhould not be turned away when they have ſo long, and faithfully officiated in our *Gates of Juſtice*, and aſſiſted in the Execution thereof; and although they are now *Gray*, and *hoary-headed*, and full of years, are not grown Impotent or feeble, but having a perpetual youth, and ſpring attending upon their endeavours,

deavours, have made the borrowing of Money more eaſie, and the Creditors better ſecured then they were before, the making of that Statute of 25 *E.* 3. and the more general uſe of arreſting of the Body, or relying upon it, as the better ſecurity; and not only in the reaſon, but the long experimented good effects and uſe thereof, made good, and verified the deſign, and expectation of the Act of Parliament, for the increaſe and continuance of Trade, made by King *Edward* the 1. at *Acton Burnel*, in the 13*th.* year of his Reign; which to prevent *the loſs of Forreign Merchants Debts, which did greatly impoveriſh them, and cauſed them to withdraw themſelves, for want of a ſpeedy way of recovering their Debts*, did ordain the taking of Recognizances, before the *Major* of the *Staple*, for the ſecurity of their Debts, and that upon failer of payment, if a Writ of Execution had been ſued forth, *and the moveables, and perſonal Eſtate ſhould not be ſufficient to ſatisfie the Debt, the Debtors body ſhould be taken, put, and kept in Priſon until he had made agreement, or his Friends for him.*

Stat. of Acton Burnel 13 E. 1.

And

And time and experience have in the change, and viciſſitude of the Manners, Cuſtoms, and affairs of the Nation, and the inundations of neceſſities upon the lower, and poorer ranks of the People, brought them to a very great Aſſurance.

CHAP. VIII.

The pawn, and engagement of the Body, is moſt commonly a better ſecurity then Lands, or perſonal Eſtate, upon which the borrowing of Money was not only very troubleſom, but difficult.

THat the pawn of the Body, and liberty of a Debtor being ſo dear and precious, to which the real and perſonal Eſtate, if they have any, or ſhall have any, being as it were annexed and concomitant, are moſt commonly the *Eſſentialia conſecutiva*, and the *Collaterales ſequelæ & appendices*, to the Perſon of the Debtor; and as to what is in his immediate poſſeſſion, or are other wayes in his diſpoſe or power,

are

are as incorporate and conſocate with it, as the *Contenta* are in, or with the *Continens*; (the Goods and Chattels being, as it were *ipſa vita hominis & tanquam alter ſanguis*, as the life and life blood,) was the *Inſtar omnium*, the moſt eaſie, moſt certain convenient, and obligatory kind of ſecurity.

Juxta Gl. in l. 14. & C. de advocat. diverſ. Judic.

And muſt needs be ſo, when the taking of Pledges or Pawns had ſuch a reſtraint laid upon it, by Gods own moſt righteous Laws, given to his choſen People of *Iſrael*: *Not to keep the poor mans Rayment or Covering, after the Sun was gone down, for that it was to be his covering.* And he that was to take it, was not to go *into his houſe to fetch it, but ſtand abroad, and the man was to bring the pledge unto him.*

Exod. 22. v. 26. & 27. Deut. 24. v. 10, 11, 12.

And by the neceſſity of the making of ſeveral Laws, by diverſe Kings and Princes in other Nations, did appear to have been very troubleſom, and inconvenient both to the Borrowers and Lenders, when Horſes, Oxen, Swine, Sheep, Men Servants, Maid Servants, and Children, were either voluntarily given as Pledges by the Borrower, or violently taken by the Lender; and were the cauſes of

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making many a Law or Conſtitution, for the taking away of grievances, or abuſes happening by it.

L L. Alamannorum in Lindenbrogio 86.

As when a Man *gave an Horſe, or a Servant for a pledge, he was to pay any dammage which it did in that time; if Gold, Silver, or any other Ornaments were pledged, and happened to be burnt, the Creditor was to purge himſelf by his Oath, that he was no cauſe of the dammage; If a Pledge was given, and a Surety with it upon the Debtors Oath, and the Oaths of the Neighbourhood where he was born, the Party pledging deſiring to have it again, was to allow the Creditor the curioſity of his choice; of one, two, or three Sureties none were to take Pawns or Pledges; without licence of the Judge; and they which aſſigned it over unto others, whereby to exact more then was due, were to looſe their Debts; and if the Creditor did take more then was pledged, he was to pay four times the value, if he were ſued for it within a year; If a Creditor took it againſt the Law, and a Man taken in pledge were killed, or any other dammage were done, the Creditor, and not the Owner of the Pledge, was*

LL. Wiſigothorum lib. 5, §. 2.

LL. Longobard. tit. 21. §. 5. & 16.

Edictum Theodorici Regis 122, 123, 124.

LL. Friſonum tit. 9. & in additamen. ſapient. Ulmari.

was to pay it: If any Man took a Free-man as a Pledge by force, and shut him up as a Prisoner, he was to pay forty Shillings penalty; If the time for the Pawn was expired, and it was not within that time redeemed, he was to bring it before the Judge, whereupon an Appriſement made by three honeſt Men, he was to be licenſed to ſell it, reſtoring to the Owner the over-plus. If Men or Maids were taken in pledge, and being kept in the Cuſtody of the Creditor, had ſtolen any thing, he was to endure the damnage. If Oxen, Horſes, Minuta Animalia, or ſmaller Cattle, Veſtments, Jewels, and Utenſils of Husbandry, remained as pawns with the Creditor, by the ſpace of twelve nights, and they were not redeemed, he might make uſe of them as his own: And if he that owed the Pawn or Pledge, complained that they were miſuſed, he could have nothing but the Creditors Oath concerning it. If any did pawn a Man or Maid-ſervant, of another Mans by a miſtake, he was to procure them to be releaſed; And if the Creditor was queſtioned for it by their Maſter, he was to take his Oath that he thought the Debtor had pawned them. If any Debtor did againſt the

LL. Bajuvariorum §. 24

LL. Wiſigothorum lib. 5. tit. 3.

LL. Longobard tit. 21. §. 3.

the Law, give any Man in pawn or pledge without Licence, he was to pay fourty Shillings penalty; And *if the Creditor took Hogs in pledge without order, both he and the Driver were to undergo severe penalties.* LL. Baivar. tit. 12. §. 1. 3, & 4.

And the grievances and inconveniences, did by pawning and pledging grow so high and burdensom, as by *Theodorico*, King of the *Gothes* and *Italy*, the pawning of the Children by their Parents was forbidden. And *Charles* the Great, or *Charlemaine*, added to his *Lombardy* Laws concerning pledging, that he *Et ille cujus est causa*, the Emperor and the Creditor *Would as they please shew mercy*; and ordained that *No Judge should cause Men to pawn any thing contrary to Law, especially their Oxen, Quia audivimus multa damna & afflictiones propter hoc Populum nostrum sustinuisse*, For that he understood, that his People had lain under many losses and afflictions by it. Constitut. Theodoric. in Goldasto §. 95. LL. Longobardorum tit. 21. §. 26.

And the borrowing of Money by Pawns, and Pledges, and securing of it, though with less usury and Brocage then now, was in the former Ages so very difficult, and upon hard terms, as upon the putting in a

Fidejussor or Surety: For a Debt or Money amongst the *Burgundians*, he *That became the Surety, carried home to his house the Debtor, there to remain as his pledge for performance*; And where the Surety had not so secured himself, he was *Before Witnesses to have three times more than the Debt secured, or gaged unto him*; And *if the Debt were not paid within three Moneths, was to retain it to his own use.* And the Old *Bavarians* did use, *To take the Bodies of Men for Pledges or Security, and shut them up as Prisoners in their houses.*

LL. Burgundionum §. 9. & 19.

LL. Bajuvariorum tit. 3. §. 24.

Nor was the borrowing of Money in the Kingdom of *Pegu* or *Brama* very pleasant, where the *Wife, Children*, and *Slaves of the Borrowers are bound to the Creditors, who may carry them to their Houses, and there shut them up or sell them.*

Purchas Pilgrimage Tom. 1.

And was not with us in the times of greater Charity, which was then believed to be a *Scala Cælorum* very meritorious, and the most ready way to blessedness, so easie as it is now? when in the Reign of our King *Henry* the Second, and long before, and sometimes after, the Lenders of Money,

it

if they were any thing ſuſpicious of the return and payment thereof, did not ſeldom take an Oath of the Borrower, beſides his Bond or Pledges, which gave the Eccleſiaſtical Courts an occaſion, or pretence of taking cogniſance of Debts, and incroaching upon the Juriſdiction of the Kings Temporal Courts of Juſtice; as may be ſeen in many Plea Rolls, in our Kings Courts of Juſtice, in the Reigns of King *Henry* the 3*d*. *Edward* the 1, 2*d*. and 3*d*. where Prohibitions were ſent into the Spiritual Courts, by our Kings and their Temporal Courts of Juſtice, and Actions were brought upon the diſobeying of them by the Parties grieved, as well againſt the Eccleſiaſtical Judges, as the Parties therein proſecuting: *Quare traxerunt eos in placitum in Curia Chriſtianitatis, in placito debiti contra prohibitionem Domini Regis*; And then there was no doubt, but that a Sentence being given for the payment of the Debt, an Excommunication was upon the non prrformance denounced, and a Writ de *Excommunicatum Capiendo* often granted by the Secular Power, to arreſt, and take the Body of the Defendant;

Pryns Hiſtorical Collections in the Reigns of King John, H. 3. & E. 1.

dant; which kind of Writ and Proces was as early as the Conſtitutions of Parliament of *Clarendon*, in the tenth year of the Reign of King *Henry* the Second.

Rot. Pat. 25 E. 1. intus.

Inſomuch as King *Edward* the Firſt, to preſerve the Priviledge of his Menial Houſehold Servants, and prevent their Arreſts, and Impriſonments upon Excommunications, held it neceſſary to make and iſſue out his Writ, *De promulgatoribus Sententiam Excommunicationis in Miniſtros Regis capiendis & impriſonandis*, to take and impriſon ſuch as excommunicated any of them.

CHAP.

CHAP. IX.

The difference betwixt borrowing of Money upon Lands and real Estate, and the procuring of it upon personal security, and that without trust and personal security Trade cannot well or at all subsist.

AND the difference betwixt the borrowing of Money upon Lands and real Estate, and the procuring of it upon personal security, may by the Borrowers sadly be evidenced.

When, security by Lands is now most commonly by way of *Lease* and *Release*, being a dark way of assurance; and within the memory of man, at first only purposely contrived by Serjeant *Francis Moore*, at the Request of the Lord *Norris*, to the end that some of his Kindred or near Relations should not take notice by any search of publick Records, what conveyance or setlement he should make of his Estate; and by the sad experience of sometimes double or treble

treble Mort-gages, hath not appeared to have been ſo ſafe as the former, which was more publick and of Record.

And when for a Security of two thouſand Pounds, the Borrower muſt upon ſtrange ſcrutinies, and almoſt a *Spaniſh Inquiſition* (the torture of the Body only excepted) have his Eſtate, Evidences, and Credit put upon the Rack, and be bound with an abundance of over-jealous, hard-hearted, thorney Covenants, and unmerciful proviſoes, and conditions too near of Kin to the *Scottiſh* moveable Bonds, mort-gage Lands worth four or five thouſand Pounds or more, give his anſwer upon Oath to a Bill in *Chancery*, what Judgments, Statutes, or Incumbrances are upon it, and ſo embroil that and the reſidue of his Lands and Eſtate, with Statutes, Judgments, and Recognizances of great penalties, for the performance of thoſe Covenants, as he ſhall hardly be able to have any more Credit by it, or Money lent upon it; or if the Creditor, who to be ſure to keep him in the Chaines, or thraldom of his power and threatning, will ſeldom give him time for above one

year

year or two, for the repayment of the principal money and Intereſt, under the ſeverity of a forfeiture, will, if he be a *Nabal*, more eagerly then he needs or ſhould, call for his Money; upon a pretence of the Intereſt not being duly paid (of which the backwardneſs and delay of the Tenants may be many times the only cauſe) or of his want of the principal Money, which upon a due Examination may appear to have more of a contrivance, then truth in it; or if that will not trouble or diſturb the Debtor enough, will do all that he can to affright him, to quit his right in the Land, and permit him to have a cheap bargain of it, by ſuggeſting ſome flaw and defect to be in the Title; and tells him that otherwiſe he muſt call in his Money, for he dares not continue it any longer upon ſo weak an aſſurance: And if he thus gets it at a lamentable cheap rate, can notwithſtanding aſſure himſelf he hath a very good title, and ſuch as needs no confirmation; but if that will not do his buſineſs, and accompliſh his griping deſign will exhibit his Bill in *Chancery* againſt him, to enforce him to pay the Money, or looſe his

equity of Redemption, whereupon a ſix Moneths, or ſome not very long prefixion given unto him by the Lord Chancelor, or Lord Keeper, he muſt either upon that ſhort warning ſell the Land at low and unreaſonable Rates, and great diſadvantages and loſs to a Stranger, or take what pittance or little Sum of Money the Mortgagee will find a conſcience to give him, upon a Releaſe of his claim and intereſt in the Land, which is twice and many times more worth then the Money lent, upon ſome ſhort prefixion or time of Redemption allowed; And that affording him but ſom ſmall parcel of relief, and he being not alſo at that time able to procure a Redemption, muſt lie down under his ſorrow, and let the Mortgagee enjoy the Land, for ſcarce half the value.

A due conſideration whereof might either in equity or compaſſion become a Court of Equity, in ſuch a caſe to order the overplus of the juſt price or value of the Land, after the principal Money, Intereſt, and coſts of Suite ſatisfied, to be paid to the poor Mortgagor, and his Wife, and Children, and be much more agreeable to Juſtice

ſtice and good conſcience, then to deliver up the diſtreſſed Mortgageor, to the greedy appetite or gripes of a mercileſs Creditor or Uſurer *bruiſe the broken Reed*, *add affliction to affliction*, and *ſtrengthen the hands of the Oppreſſor*; which the Prophet *Ezechiel* ſaith, was one of the crying ſins of *Sodom*, in a time eſpecially when too many of the loyal Nobility and Gentry have ſo abundantly ſuffered in their endeavours to reſcue their King, Country, Laws, Religion, and Liberties from the pretences and oppreſſion of a factious and diſloyal part of the Nation, who by plunder and ſequeſtrations did too well know how to enrich themſelves by the ruin of their betters, and having after all their villanies received his Majeſties mercy, in being themſelves pardonned, cannot tell how to allow a Chriſtian forbearance to the ſick, and languiſhing Eſtate of a Mortgageor, who hath been ſo much undone by them.

And whether he can be able to Mortgage the reſidue of his Lands, or ſell that which is already mortgaged, muſt take along with him as new additions to his heart breaking

miſeries, the fall or enforced abatement of Rents, as much if not more then twenty per Cent, and to give the fuller weight or meaſure to his troubles, be conſtrained to ſell it after that abated Rate and Rent at ſixteen years purchaſe, when it would before have yielded eighteen or twenty, and could neither procure two thouſand Pounds upon the former Mortgage, or the latter, if he could attain unto it without one hundred Pounds, given for the procuring of each two thouſand Pounds, and walk a great way, beſides towards fourty or fifty Pounds Charges more, in the contriving and preparing the aſſurances; and after many a ſcruple and Rock of the Lenders, never to be ſatisfied fulneſs of ſecurity, paſſed over many a weeks attendance and charge, in the humoring of his many times purpoſed procraſtinations, to drive him into greater neceſſities, whereby the eaſier to procure his unjuſt advantages, and render him the more patient to endure that *Strappado*, may, being bound hands and feet, and abundantly wrapt in Sheep-skin, engagements, and incumbrances, ſit down

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at *Weeping Croſs*; and wonder there was no expreſs Prayer in our *Litany*, againſt unmerciful Creditors, and ſuch as make more neceſſities then they find, with a *good Lord deliver us.*

And if that now over trodden way be not taken, to dig down and demoliſh the Borrowers Eſtate, and foundations of livelyhood, will apply himſelf to as deſtroying a courſe, by extending the mortgaged, and all other Lands which the Debtor hath at a low rent; and keep it ſo in his poſſeſſion, and a careleſs management, and with ſo great a loſs to the Debtor, as the fiftieth year of *Jubile* may come, before the Lands by the unjuſt accompt of the mean profits, be able to ſhake of that burden, and bring an Action alſo againſt him, and impriſon him for the not performance of his Covenant, to pay the mortgage Money, or for breach of ſome other Covenants in the deed of mortgage; and if he hath any other Lands of his own, or his Wives, that can eſcape the fury of ſuch a Creditor, ſhall not by reaſon of the former incumbrance, be able, without great difficulties and coſt,

to

to borrow any more Money upon what remains unmortgaged. And if the Money could be borrowed of a Citizen of *London* upon a mortgage, it muſt be of Lands near *London*, or in ſome adjacent County, otherwiſe his *Niceтyſhip* will by no means be intreated to lend any Money upon it; but he muſt be as unlikely as a poor Schollar or *Poet*, to borrow any more Money, and may dream of a Credit, and believe he hath a right unto it, when he is never more like to come in ſight of it.

When a Country Gentleman, whoſe Credit hath not been tainted, could heretofore with eaſe enough ſometimes upon his own ſingle Bond, or at the worſt with a Friend or two, and one of them but his Taylor joyned in the Bond with him, borrow fifty or one hundred, or two hundred Pounds; and the Farmer or Countryman wanting Money to pay his Rent, could upon a ſhort warning procure fourty or fifty Pounds, upon his own Bond or Bill; and a Citizen of *London*, or ſome other trading Town, can with a ſmall Eſtate in Money

and

and no Land, but a great care of his Credit and performances, be truſted upon his Word, Bond, Bill, or perſonal Security, with ten or twenty times more then he is ever likely to be worth.

And it is very well known, that a multitude of *London* Merchants, Retaylers, Tradeſmen, and Artificers, in or about that vaſt City, and the overgrown Suburbs thereof, being in their number about *ſix hundred thouſand* Men, Women, Children, and Servants could not maintain or uphold themſelves, in their ſeveral orbs and ſtations, without a truſting of their Cuſtomers; and being truſted themſelves, or a confidence on both ſides in perſonal Securities, Bargains, Contracts, and Promiſes; which is very often done, and neceſſitated to be done without Pawns or mortgage, ſecurity in the courſe of Commerce and interchange of affairs one with another, by all Merchants, Seamen, Retaylers, Farmers, Taylors, Laborers, Husband-men, and all ſorts and degrees of People in the Kingdom, and other Parts of the World; and even the landed men and Free-holders, who are not the *fortieth*

tieth part of the Nation; and the Copy-holders, when they do not deal for ſo great Sums of money, as to ſurrender and engage their Copy-hold Eſtates, cannot in the multitude, diverſity, ſpeed, and management of their almoſt daily and hourly buſineſs one with another; and at *Markets* and Faires, and elſewhere, avoid the taking or giving of perſonal Securities or Contracts, which cannot primarily affect thoſe that have Lands, or concern their real Eſtates, but are to follow the Perſons of thoſe that are Debtors, for the performance thereof.

So as it would be no Probleme, or *Griple* aſſertion, to aver that the forbidding of truſt or giving dayes of payment, by which the Citizens and Trades-men of *London*, do gain more then they ſhould do by enlarging their price, and *Items* to a very great exceſs, and in ſome, as it may be feared, to more then a double or larger Intereſt, and the taking of huge Sums of money with *Apprentices*, now more then formerly, become a part of their Trade; and a publique Regiſtring enjoyned of all money and debts, which they do owe and

are

are engaged for, by Credit or otherwiſe.

Would quickly manifeſt how Trade would be undone, if it were not for truſt upon perſonal ſecurities, and performance, and the benefit, and neceſſity of Writs of Arreſt, enforcing their Debtors to make payment, or to be the more careful of it.

And by ſo ſpeedy a way of enforcing a Defendant to appear to the Action, make the Merchants and Trades-men ſo punctual in their payments, whereby they do get great Credit and Riches, and have given a confidence to all Trade and Commerce, which ſince the Reign of King *Edward* the 3. hath been hugely encreaſed, makes the poor man, which hath no great Stock or Eſtate, to be as good ſecurity for what he undertakes, as thoſe who have greater; and gives us the reaſon, why thoſe that do lend Money unto Country Gentlemen, or Men of great Eſtates do uſually require a Citizen, though he have but a very weak and ſmall Eſtate, and is more in danger of breaking then the Gentleman, to be bound with him, and do think their money not

to be very ſafely lent without ſuch a ſecurity. And that great City and *Emporium*, which ſitteth *upon many waters*, and *ſtretcheth out her lines to the utmoſt ends of the Earth*, would certainly languiſh and decay, if ſhe ſhould be deterred, or bound up from truſting, or being truſted; and there would be none, or a very little Trade and Commerce in the Nation, if it ſhould not be driven by perſonal ſecurities, when our *Merchants* that do Trade into *Perſia*, the *Eaſt-Indies*, *Turkie*, the *Levant*, and *Norway*, with as much *Money* as Commodities, having neither Pawns nor Lands to morgage, do not ſeldom deal upon perſonal ſecurity; Forreign Merchants being in that manner contented, to do as they would have done unto them, and do many times borrow money in their own Countreys, to give day and time of payment unto *Merchants*, and their Correſpondents in other Countries.

And there would not be wanting, very great and many miſchiefs, inconveniences, delayes, diſturbances, and obſtructions in the univerſal Trade, and affaires of our Nation, both at home and abroad, if that great and

daily manage of our Commerce at the Royal Exchange of *London*, for vaſt ſums of Money or the value thereof, twice every day, in every week, of every year, Sundays, great Feſtivals, and publick and extraordinary dayes of Faſt, or Thanksgiving only excepted, ſhould by a jealouſie and diſtruſt, in all Merchants and Men of Trade therein every day concerned, and the Actions and Eſtates of one another, forſake their accuſtomed, and very laudable wayes of truſt, and confidence in the credit, and punctuality of performance of one another, and not believe a Bargain or Contract to be well and ſecurely made, or Bills of Exchange ſafely anſwered, without an almoſt infallible certainty, of the Eſtates of thoſe with whom they deal or correſpond, and in their diffidence thereof (when as to the Sea and Forreign Trade, the Winds and Tides will not be intreated to tarry, and opportunities of vent and benefits, if not ſuddainly laid hold on, cannot be eaſily or at all times met withal, or gained) adjourn the concluſions, or certain engagements of their Bargains, Contracts, Undertakings, or Promiſes, until

they could consult with their Lawyers of some of the Inns of Court, some not easily to be satisfied, Conveyancers, Scriveners, or *Men of scruple*, how to make their Contracts, Charters, Parties, Agreements, Partnerships, or Insurances to be without any, or very little, or seldom hazard or danger, or procure some *Perspective* glasses to afford them a clear intimacy, or visibility into the Estates of Men, or a possibility of Accidents, Shipwracks, Piracies, or Sea misfortunes, or the breaking or knavery of Retaylers, and render them as safe in their Trade, and adventures against all contingencies, as any moral or worldly probability, or security can make them.

And that their great concernment, and height of reputation, guarded by the wakeful Eyes of *publick Notarial* Protests (which is sometimes tromped upon them, by some of their Forreign Factors or Correspondents, in advertencies or over charging them; is of so britle and tender a nature, as a small gust of misfortunes, or adversities, overturns, and sinks it; or a malicious or foolish report of being broke, or likely to break,

ſhatters it all in pieces, and puts the not long before proſperous Owner of it, to recover as well as he can the dammage ſuſtained by it, and the Shipwrack of Credit can be no otherwiſe then exceedingly ominous, and dreadful to men that are to make much of their livelyhoods, and hopes to raiſe their fortunes by it; when beſides the many other diſaſters attending and lying in *Ambuſcado*, the Statute of Bankrupt made in the Reign of King *James*, doth in the Character of a Bankrupt 21 *Jaſ. ca.* 19. (amongſt other things declare, *any Merchant, Retayler, or any other ſeeking to get their living by buying or ſelling, to be a Bankrupt, who being indebted to any Perſon, in the Sum of one hundred Pounds or more, ſhall be arreſted for the ſame, or lye in Priſon two Moneths or more, for that or any other Debt, or afterwards eſcape out of Priſon, or gets forth by common or hired Bail, ſhall be accompted and adjudged a Bankrupt to all purpoſes and intents*: And provide that ſuch a one *ſhould have his Goods and Eſtate ſeiſed, and divided amongſt his Creditors proportionably to their debts, and be* liable to the penal-

penalties of the ſaid Act, and the orders and proviſions therein contained.

For certainly without competency of truſt and confidence in Trade, and dealings one man with another, and a pawn or ſecurity of their Bodies, ſubject to Arreſts, compulſion or diſgrace, all Commerce and Traffique would be deſtroyed; no Merchant or Chapmen will, or can give day for his Wares, when he neither knows, whether his Cuſtomers have Goods ſufficient to pay for what they buy, or where to find them, when the Wares that he ſells may either be uſed, or ſold away again to another; or if they could be met with again, will not be of half the value they were ſold for.

No man without perſonal Security, Contract, or Promiſe will lend any money to Merchants, becauſe their Goods are either at Sea, or in Forreign Countries, and ſent out ſo often, and upon ſo many adventures and hazards, as if they do, they will not know how to get it again.

Young Tradeſmen, and Men of hope and induſtry, that have none or very little Stocks of their own, will have no Money lent them;

them; or if they have, it muſt be upon ſuch other Cautions or Security, as may ſtarve, and take away the hopes of their preferment.

Moneys given to Charitable uſes (as they are many times) to be lent upon ſecurity to poor Tradeſmen, or young Beginners, that have little or nothing in Eſtate or their Shops, cannot without Bonds or perſonal Security be lent or diſtributed, according to the mind and intention of the Donors (mortgage of Lands not being likely to be had) for otherwiſe it cannot be done, but to ſuch as are rich already.

No Merchant, or whole Sale-men, will adventure to truſt or ſell to Retaylors, upon one, two three, or ſix Moneths, as they ſhall be able to make or return it; nor Retaylers to Retaylers, as they do often uſe to do, if they do not give perſonal Security, whereby to be arreſted, if they do not pay the Money contracted for.

No Country Vintner will without it be furniſhed by the *London* Vintners or Merchants; no man ſhall know how to do good to a Friend or Servant, or ſet up a young

Tradeſ-

man, if perſonal Securities ſhall not oblige their Proces of Arreſt.

No Tradeſman ſhall be able to Trade as they do now, and get his living and a comfortable ſubſiſtance, by retailing under other Tradeſmen; nor any Mariner, Souldier, or Servant be truſted, becauſe they have nothing but their Bodies to be anſwerable for it.

Many Lawyers and Miniſters, who do carry much of their Eſtates in their brains; the Artiſan in his hands, and a few Tools; the Souldier the moſt that he hath by his ſide; Unlanded men or untrading Batchelors or ſingle Men, all or the moſt part upon their backs; and the ſmaller ſort of Farmers and Country Cottagers, having very little Goods or Houſhold-ſtuff, may bewail their want of Credit, when perſonal Security cannot help them; and all the Trade and Commerce, good will and charity of the Nation, that was wont to flouriſh more by the Care and Credit, and honeſty of Men, then any certainty or viſibility of Eſtate, muſt, if neceſſities and occaſions cannot be ſupplied as they were

wont

wont to be by Bonds, Bills, or perſonal Security, now be turned into a way of Pawns and Brocage, and three times more given then the value of that which is bought or borrowed, where ready money is wanting.

And all Credit and Induſtry fall to the ground, eſpecially if it ſhall be conſidered that not long before our late times of Troubles and Confuſion, the money of ſome *Dutch* and Forreign Merchants lodged here, being eſtimated to have been as much as five Millions Sterling, have been much of it by reaſon of our bringing down of Intereſt to ſix per *Cent*, and other diſturbances called home; and that the money Current in the Kingdom, is by no very random computation verily believed to be ſcarce enough to pay the Intereſt of the Capital, of what is owing by the People one unto another; and if the courſe and way of Credit ſhould be now ſtopped, and turned out of his Chanel, we may not expect to ſee any more happy effects of truſts and Credit, as in this Age of ours we have done in a rich Sir *John Spencer*, Sir *William Craven*, Sir *William Cockain*, and Sir *Paul*

Raymng, who beginning their World with no Original Riches, have gone out of it with the comfort and honour, of laying the foundations of ſeveral noble Families, and every day in the hopes and flouriſhing of many young Merchants, is ready to proclaim the great benefits of truſt and Credit, and that, which not ſeldom happens, by the only employ and advantage of another mans money: And the ſad & *inelu&tubile fatum* diſmal, and not to be overcome diſaſters, which do fall upon thoſe whoſe former props of truſt and Credit have failed them, when their Friends ſtand afar off, and look upon them as *Lepers* and *Perſons infected*, do by the ill government of their tongues and cenſures, debar them more then they ſhould, of all the opportunities of fortune, or means to a more happy condition.

It was Credit and the care of it, not Lands or a viſible Perſonal Eſtate, which made our Prince of Merchants Sir *Thomas Greſham*, in the Reign of Queen *Elizabeth*, to be able to lame the King of *Spain* and his *Indies*, in his deſign of ſubduing *England*,

by

by draining of his Banks beyond the Seas with his perſonal ſecurity.

It was perſonal Security, Credit, and the care of not having any man come twice to his houſe for money, which made Sir *Abraham Dawes*, one of the Farmers of the Cuſtoms, in the Reign of King *Charles* the *Martyr*, able to take of thoſe who voluntarily offered it, one thouſand Pounds at a time upon his ſingle Bond or Bill, which to ſupport he did alwayes (as he himſelf acknowledged) keep five thouſand Pounds at a time in a Cheſt in his houſe at Intereſt, and when he had paid out any conſiderable part of it borrowed, and took in as much to repleniſh it.

It was an imaginary Credit, & on heretofore punctual performance of our late *handy dandy* men the Bankers of *London*, paying one mans money with anothers that decoyed, and enticed almoſt all the money of *England*, into their running, ebbing, and flowing Caſh, upon their or their Servants ſingle notes, for ſome years & under their only hands, for five hundred or a thouſand Pounds at a time, for ſome years, after upon the Maſters ſingle Bonds.

And it was Credit and perſonal Security, not ſo much any real Eſtate in Lands or Houſes, that have made the Banks of *Lyons* and *Amſterdam* ſo to flouriſh, in the midſt of Wars, and abundance of Taxes, and enabled the *Dutch*, thoſe mighty men of Trade and money; whoſe Lands and Territories, in all their Seven United Provinces, do in quantity ſcarce equal our *Yorkſhire* and *Lincolnſhire*, to ingroſs almoſt all the Trade of the Heathen and Chriſtian World, to raiſe *five Millions* Sterling at home, upon no more then as many Weeks ſhort warning, and to manage at a vaſt expence, a long and laſting War with the greateſt Kings and Princes of Chriſtendom.

It being certain that Securities, or Cautions for money or Credit, cannot in the general be ſo ſafe poſſible, or ready at hand to be had, as perſonal Security; which as our *Bracton* and *Fleta*, in their Diviſions of Actions into real, perſonal, and mixt; have informed us, do *inducere Actionem in perſonam*, make an Action to be perſonal, for that the individual and very ſame money is not, nor can by the Plaintiff be expected

Bracton lib. 3. de actionibus ca. 3. Fleta lib. 2. ca. 6. §. 22, 23.

to

to be reſtored, but the value of it or dammages; and it doth oblige the Perſon, but not at the firſt the Lands, Goods, or Chattels, as our Statutes *Merchant*, or of the Staple, or Recognizances in Chancery, or elſewhere taken, do when they do carry in them a condition upon default of payment, to leavy the money upon Lands, Goods, and Chattels, and upon the Body, if the Lands, Goods, and Chattels be not ſufficient to ſatisfie; and in a Bond the words obliging are, *Obligo me Hæredes, Executores, & Adminiſtratores meos*, the Land being chargeable in reſpect of the Perſon, but not the Perſon in reſpect of the Land; and the Goods and Lands, if any or the properties thereof are many times more inviſible, then the Perſons of men; for Bonds or Contracts do bind, and engage the Perſon as much, as if he did thereby undertake to pawn his Body, and ſubject it to an Arreſt or Compulſion, to appear in Judgment, if he ſhould fail in the performance; for all Contracts and Promiſes, ſaith *Fleta*, have in them *Vinculum Juris* ſuch a Bond or Obligation, as ties us to the performance of them Fleta.

Bronkhorſt tit. Reg. Juris, & Commentar. ad loc. Bracton lib. 1. ca. 5.

them, and is ſo perſonal and inſeparable; as it doth *ſequi perſonam obligati*, go along, ſaith *Bronkhorſt*, with him that made it like the ſhadow with the Body: And *generaliter*, ſaith *Bracton*, *Jus gentium ſe habet ad omnes Contractus*, The Law of Nations binds us to the performance of them: For, ſaith *Grotius*, he to whom the promiſe is made, hath by the dictates of natural reaſon a right to compel it by lawful means.

Grotius de Jure Belli lib. 2. ca. 6.

For a man may be known where to be found, when his Money, Goods, or Eſtate cannot, or what Eſtate he hath at home, or abroad in his own or other mens hands in truſt for him, or otherwiſe: And the Pawn or Pledge of the Body muſt needs be the greateſt tye upon a Debtor; for if a Pedler travelling with a pack of Pedlery upon his Horſe, hath his Horſe diſtrained and taken away, and he be put to carry his pack upon his back, or if the Debt be ſo much as to lay hold on both, that cannot ſo diſturb or trouble him, as an Arreſt will do of his Perſon: Or if a poor man ſhall have his only Cow, and the Inſtruments and tools of his daily labour taken from him,

that

that will not ſo much affright or beggar him, and his Wife and Children, if he do not take care to prevent it, as an impriſonment of his Body will do.

And our Bonds, are not ſo rigourous, ſevere, or jealous, as the moveable Bonds in *Scotland*, as they there term them are, which even for ſmall Sums of money with us (but great with them) can be ſo diſtruſtful as to enforce the obligor to renounce beforehand, *All manner of exceptions to the Law, which may be proponed to the contrary, and all Priviledges and Juriſdictions, with a clauſe and conſent inſerted of Regiſtration, Horning, and Outlary*, and *to have the ſtrength of a decreit to pay principal Intereſt and Charges, according to the Obligees own modification, declaration of conſcience or diſcretion*; and ten Pound *Scotch* money *for like ſhilling Scotiſh Money, which ſhall be unpaid of the Principal*; nor ſo fierce as in ſome Parts of *Germany*, where the Creditor, if he ſuſpected the Debtor to be poor, will take *Juratorium Cautionem*, make him ſwear that he would pay the money again; amongſt whom and the *Italians* there were *Oſtagia* or Underta-

Scottiſh Records in the Tower of London, whilſt they were there impriſoned by *Oliver Cromwel*, & Parl. *James* the Sixth in Anno 1600.

John Coppen in Rangenſdorf in Deciſ. quæſtion. 33.

dertakings, to give entertainments to the Creditors with Men and Horſes, at the Sureties or Debtors charges, till the Debt were ſatisfied.

And the Civil Law was upon Contracts and Bonds, for money lent or truſted, ſo well furniſhed with renunciations beforehand, of the benefits of Law in general and particular; as there is by *Butrigarius* reckoned up no leſs then fifty three ſeveral ſorts of Renunciations, which the cruelty or diffidence of Creditors did in their Contracts and Bargains uſually, and as they pleaſed put upon thoſe that had occaſion to borrow or deal with them.

Butrigarius in Tract. de Renunciation.

But our Nation keeping it ſelf conſtantly to its own more gentle, and yet binding enough conſtant form of Bonds and Obligations for money, uſed here in *England* for ſome Centuries of years laſt paſt, hath with its Proces of Arreſt attending and guarding it, perſwaded the People thereof juſtly to believe that that kind of Proces hath produced ſuch a better, more ſure, and eaſie Credit in the Nation then was formerly, as it hath not only greatly encreaſed, encouraged, and facilitated the Trade and reputation there-

of,

of, but it hath been its greateſt prop, and ſupport in the for many years long and bloody Wars, betwixt the two great contending Houſes of *York* and *Lancaſter*, when Eſtates in Land were little worth, and where they were of any value, or enjoyed any quiet from the furies of War, or diſturbance of Seiſures, Attainders, or Confiſcations were until the 27*th.* year of the Reign of King *Henry* the 8*th.* and the 27*th.* year of the Reign of Queen *Elizabeth* covered, and protected with ſecret and undiſcernable uſes, many of which were fraudulent, and in the many other alſo toſſes, and troubles of our preſent and former Ages, which may appear to be more then a conjecture to any, who ſhall but conſult their own reaſon, and obſervations of the difficulties and inconveniences which would daily and hourly happen, in the borrowing, procuring, or ſecuring of money, if nothing but Pawns or Pledges, at as hard a rate to private Brokers many times as twenty per Cent, or mortgages of Land would be taken for ſecurity for money, or moneys worth, or the value of it, which in matters of Trade

would ſo quickly turn all into Exchange and Barter; as a Tradeſman could not be able to furniſh, or ſtock himſelf, or his Shop, without either ready money, which many Tradeſmen, and not one in every twenty, are alwayes or often able to do, or diſfurniſh, or unſtock themſelves, and carry as much out as they endeavour to take in; and how quickly and eaſie, upon the ſtock of Credit, Reputation, and Opinion, one or more hundred Pounds may be borrowed upon a Bond with one or two Sureties? and how readily, and without any more ado one or more Counter-bonds of the Principal doth ſerve to counter-ſecure them.

And where Citizens do take Apprentices, without whom they cannot manage their Trade, and by taking too great, and in former Ages unheard of Sums of money, to teach them their Myſtery of gain, will find it to be as inconvenient to themſelves, in that their new way of Prentice Trade, as troubleſom to the Parents of the Apprentices, if they were to be ſatisfied with nothing but a mortgage, by Security of Lands, or Pawns, or Pledges to be given by them

for

for their Childrens honeſty, many times dearly diſcharged, when as now their ſingle Bonds or Covenants will ſuffiſe.

And they ought not ſurely to be accompted too Sanguine or over credulous, who ſhall give entertainment to an opinion, that if all the money which hath been borrowed in the times of our *Engliſh* Troubles, lately paſt or long ago, or in the now times of our unparrelled pride, prodigality, and luxury, had been to have been borrowed only upon Mortgages, Pawns, and Gages, the vitious and fooliſh part of the People of this Kingdom, which are the far greater number, would have long ago ſuffered their follies, to have brought them into the ſad condition of the *Egyptians*, in the time of the more thrifty and forecaſting *Joſeph*, when in a famine only of Bread, prognoſticated to continue for ſeven years, they were in the firſt year of it conſtrained, when money failed them, to take bread in Exchange for their *Cattle, Horſes, Aſſes, and Flocks*, and after their Bodies offered as pledges upon the like occaſion, and neceſſity to give up their Lands for neceſſary

Geneſis 47.

(but no wanton) ſupplies.

And although the firſt pawn or pledge, that is mentioned in the Book of God, the moſt Ancient and beſt of Records, to have been given in the *Fore-woon* of the World, was that of *Judah*'s Signet, Bracelets, and Staff to his diſguiſed Daughter *Tamar*, for a ſecurity of what his Amours, and unlawful Contract had promiſed; yet ſhortly after his Brother *Simeon* became a perſonal ſecurity to his Brother *Joſeph*, for the bringing unto him his youngeſt Brother *Benjamin*, and was in the mean time *bound and kept in Priſon*; and *Reuben* upon his return to his Father *Jacob*, to remove him from his unwillingneſs to ſend his beloved *Benjamin* into *Egypt*, offered his *own two Sons in pledge, that he would ſafely return him unto him again*: And when that could not prevail, *Judah*, without being bound or kept in Priſon the while by his Father, became a Surety for him as it were body for body, and *that of his own hand he ſhould require him*. And the after Ages have found ſo great a benefit, as well as a neceſſity of perſonal ſecurity, as here in *England* long before the Statute of

Geneſis ca. 38.

Geneſis ca. 42.

25 *E.* 3. the Bodies of men, as well Nobility as others, have to the great advantages of the Kingdom, and upon great and weighty reaſons and occaſions of State, been given and taken as Sureties and Hoſtages, for and to diverſe of our Kings and *Princes.*

And by our Laws agreeable in that and many other particulars, not only to the Civil and *Caſarean* Laws, but of the Law of Nations the Plaintiffs, when by our Original Writs, made out of the Chancery in Actions of Debt, impowring the Juſtices of the Court of *Common Pleas*, to make proces and hold plea thereupon, the Sheriff to whom the Writ is directed, when he doth ſummon the Defendant to appear before the ſaid Juſtices, being commanded to take Sureties of the Plaintif, that he will proſecute and juſtifie the Action, was to take it by perſonal ſecurity, and not by any pawn or pledge.

Sigonius de Judiciis lib. 1. cap. 21.

So as if there were not ſo many irreſiſtible Arguments, Reaſons, Examples, proofs, and neceſſities for the ancient, long continued uſe of the Writs of *Capias* and Outlary, beyond a preſcription and memory of man, and many ages.

That

That which hath in all Ages been allowed, as the beſt expedient to ſecure from doing or ſuffering wrong, in caſe of leſſer or greater Crimes, as Treſpas, Felony, Manſlaughter, Murder, Treaſon, or ſuſpition of either; where the leſs favours are to be ſhewed, *propter atrocitatem criminis*, for the horridues of the Fact, until Offenders can be brought to Judgment: For whom *Plegii ſint donec ſe defenderint Carcer & Gaola*, The Goal and the Priſon were to be Securities, ſaith our old and learned *Bracton*.

Bracton lib. 5. de exceptionibus ca. 8. 31.

And that old rule of Law not uſed, to be denyed, kickt, or ſpurned at *eadem ratio eadem lex*, that a parity of reaſon in one Law or Caſe, may be the foundation of a like Law in another; and that other maxime of Law, *Qui non habet in Ære luat in corpore*, Where a man hath nothing in his purſe to anſwer the Law, he ought to ſuffer for it in his Body, the puniſhment of Contempts of the authority of Courts of Juſtice; and the ſecuring of mens Debts, where there is *A ſuſpitio fugæ*, Any ſuſpition, likelyhood, or ſigns of the Debtors running away (which the old *Almans* were ſo careful

ful to prevent, as that rather then fail they ſuffered the Plaintiffs themſelves to take and impriſon them) may be called in as Aſſiſtants, to maintain the right reaſon and neceſſity of Writs of *Capias*, and Outlary in matters of Debt, and other the like perſonal Actions.

And thoſe very good effects of our ſaid *Engliſh* Law proceedings, and the conſequences thereof, and benefits accrewed thereby, are and may be demonſtrable by the leſs difficult way of borrowing money, more ſafe lending of it, and more ſpeedy way of recovering, and getting it in with little damage and loſs, when in this laſt Century, and preſent Age of about *one hundred and fifty thouſand Capias*, or Proces of Arreſt and Outlary, ſued out or proſecuted in a year, there are little more then *one houſand* of them if ſo many ſo arreſted or unbailable, as to be carried to Priſon, or being deſtitute of Friends or Money, do remain in Priſon a quarter or half a year at the moſt; or if any do continue any longer, they are ſo very few in reſpect of the far greater number, which were threatned or might have been there;

there; as if the Prisons of the *Fleet*, *Kings Bench*, *Marchalsea*, *Ludgate*, the *Compters* in *London*, *Newgate*, the *Gatehouse* at *Westminster*, and the Counties, and every other City Goals, or Prisons belonging to Liberties in *England* and *Wales*, shall be truly searched and examined, either as to those who are actually in every of those Prisons, or are out upon Writs of *Habeas Corpus*; or how many new Prisoners are every year, half year, or quarter of a year brought in upon Actions of Debt, Trespas, or other Civil Actions? And how long or little while they did or do there tarry the product of that accompt, may truly testifie that the terrors, and continual affrights, and trouble of Arrests, with the *Tristis pœnæ expectatio pœna molestior*, often sad apprehensions of the many inconveniences of imprisonment, which do inevitably follow as to the Charges, loss of Estate and Credit, do so summon and call together all their cares, and so gently and best of all conduce to the ends of Justice; and those that seek it, as it verifies and gives us the benefit and right use of that moderation, and care of our Laws in that rule and maxime of it,

to

to threaten more then execute *ut metus ad omnes, pœna ad paucos*, that the punishment of a few may operate as much as if all did partake thereof; the affright being most commonly that which makes the suffering to be so disproportionate, and less then what was necessarily or otherwise threatned.

For if *four thousand* Writs of Exigent be awarded, and issued out of the Court of *Common Pleas* in the year 1674 which is very near an exact accompt taken thereof, not much above *one thousand* of them do come to be returned, filed, or outlawed: But the residue, and those very many which are not, are either stayed by Agreements, or *Retraxits*, and Complyance betwixt the Attorneys, or in order to appearances upon *new Originals*, without returning and filing the Writs of Exigent: And may be taken to be no fancied Calculation, when the number of all the *Capias utlegatums*, special or general, made by the Clark of the Outlaries in the year 1674. were no more then 1094: the Outlaries reversed no more then 27.

And the Outlaries certified into the Exchequer up more then fixteen. And all the Prisoners that were for Debt, and other actions not Criminal, in the Prison of the Kings Bench (being the greatest in *England* and *Wales*) either in the Prison or the Rules, or abroad by Writs of *Habeas Corpus*, the third day of May 1653. were under the hand of Sir *John Lenthal* Knight, Marshal of the Court of Kings Bench, with the several times of their Commitments, certified upon the special order and command of the then *miscalled Parliament*, to be no more then threehundred ninety one; of which there appears to have been committed in the year 1616, — but — one. In the year 1631 — one. In the year 1633 — one. In the year 1636 — one. In the year 1637 — one. In the year 1638 — one. In the year 1639 — one. In the year 1640 — nine. In the year 1641 — five. In the year 1642 — two. In the year 1643 — three. In the year 1644 — four. In the year 1645 — seven. In the year 1646 — fourteen. In the year 1647 — seventeen. In the year 1648 — twelve. In the year

Kings — fourty-six. In the year 1650 — thirty-two. In the year 1651 — fourty-one. In the year 1652 — one hundred thirty. And in the year 1653 — fourteen.

And it muſt needs then be a wonder, and none of the ſmaller ſort or ſize of wonders, how or upon what ground, cauſe, or reaſon, that ſo very ancient, rational, legal, neceſſary and uſeful way of *Capias*, Proces and Outlary, derived and deduced from the Laws of God, Nature, and Nations, ſhould either deſerve or come into ſo ill an opinion with ſome of the People, or that it ſhould be called or underſtood to be an *Illegal, Iron ſharp and cruel Law, a Tyranny, thraldom, miſchief, ſlavery, lamentable bondage, terror, and ſorrow of heart, and utter ruine of the free born People of this Nation, founded upon a miſconſtruction, and inadvertency of the genuine ſenſe of the Common Law it ſelf, and contrary to thirty ſeven Acts of Parliament, made in Confirmation of Magna Charta*, or ſhould be repealed by the Act of Parliament, made in the 28th year of the Reign of King E. 3. and by the Statute of 42d E. 3. both. Or ſhould

now in its old age have no better a title then a grievance; and those unjust *Rabshekaes* railing reproaches, (when it hath been helpful to multitudes of men in several Ages) cast upon it.

CHAP. X.

The way of Capias *and Arrest is no oppression or Tyranny exercised upon the People, since the making of the Statute of* 25 E. 3. *ca.* 17. *or hath been hitherto, or may be destructive to their liberties.*

WHen as Tyranny in the known and general definition and understanding of it, is a cruelty or power executed by one or more at pleasure, contrary to Laws Divine and Humane, and inconsistent with the Laws of that Place or Country wherein it is exercised: For, Laws do or at the least should intend to prohibit things unjust, and to order things good and useful, for that People and Nation unto which they are applied: The intent of a vir-

tuous and good Lawmaker being as *Ariſtotle* ſaith, To make the People good, and conduct them to virtue.

Or how it can be called Tyranny, when it is no leſs then right reaſon, which ſhould be the Parent and Director of all Juſtice, when as God himſelf the moſt juſt and rational Law-giver, the Watch-man of *Iſrael*, and the *Keeper* of the liberties thereof, that gave unto Mankind a reaſonable Soul, and that great bleſſing of reaſon, which is the *Divini luminis radius*, A beam or ray of his own Excellency, did in the Laws, which he gave to *Moſes* when he talked with him, enact and ordain, That *if a man ſhall deliver unto his Neighbour money or ſtuff to keep, and it be ſtoln, and the Thief be not found, the Maſter of the houſe ſhall be brought unto the Judges to ſee whether he hath put his hands upon his Neighbours Goods* (which was nothing leſs then an Arreſt.) Exodus 22. 7, 8.

The Law of Nature that giveth every man leave, and enjoyneth them to work rather then to be idle and want, allows them not to hinder publick good, or diſturb the Rules of Civil Society, and work with-

within the City of *London* or the Liberties thereof, if they be not thereunto authorized as Free-men of the said City; or was it an oppression by an Act of Parliament, as King *Edward* the 3. did in the 25*th.* year of his Reign? to limit Artificers, Labourers and Servants wages; or as Queen *Elizabeth* did by an Act of Parliament, yet in force and unrepealed, made in the 5*th.* year of her Reign; or when King *Henry* the 8*th.* did limit the price of Victuals and Houshold Provisions by an Act of Parliament, made in the 25*th.* year of his Reign; or an oppression of the People by Sumptuary Laws for Apparel, made in his Reign, and of his Daughter Queen *Mary*'s, which otherwise in a private man according to the best and rules of Nature, giving every one a liberty *In rebus licitis & non prohibitis*, in thing lawful, not sinful and consistent with the Laws of publick good and Civil Society, would have been within the freedom and dispose of his own will.

Neither do the People of *Spain* and *Italy*, in their submission to a *Bando* or Rate, imposed upon the Sellers of Victuals and

Hous-

Houſhold Provisions; or the Natives of *France*, *Spain*, and the elective Kingdom of *Sweden* think themſelves to be too much, or any thing at all abridged of their natural liberty, by yielding for publick good a juſt obedience to their Sumptuary Laws, lately made and ordained.

For there is no Law extant of this Nation ſo made, but the Subjects might chuſe to incur the penalty or hardſhip of it, or if they ſhould happen to be too ſevere or unfit, or not ſo neceſſary, convenient, or uſeful, as was intended or expected; or like unto ſome of the Laws of the *Medes* and *Perſians*, which were ſaid to be irrevocable, but the People had by the grace and favour of the Soveraign, a remedy by Parliament to abrogate, repeal, explain or amend them by ſubtracting of ſome clauſe, or adding ſome other unto it; for liberties are both by Civil and Common Law defined to be of things not forbidden, otherwiſe *vaga libertas* may quickly come to be *miſera ſervitus*, and bring thoſe that would uſe an unbounded liberty, where it ſhall meet either with Laws or a greater

Bracton lib. 1. ca. 6.

force, into a most miserable slavety.

And therefore just liberties do by our Common Laws, saith Sir *Edward Coke*, signifie the Laws of the Land: And that which is the Law, cannot be called Tyranny; nor that which is against the Law, liberty; And that ancient manner of Trial for those who were criminally accused, called *Fire ordeal* (which ordained the Partie suspected to walk blindfold over certain Plow-shares of Iron heated red hot, laid at a distance one from another, and if the Party did not touch any of them, or treading upon them received no harm, he was declared to be innocent) coming into this Land with the *Saxons*; and the Law of Trial of Titles by Battle or Duel, continuing here long after the *Norman* Conquest, and to this day in force in certain doubtful cases, though they had very much of blood and cruelty in them, could be suffered to wear out into better Laws, and yet be obeyed as Laws, whilst they were such; the Law of torturing or pressing such men to death in case of Felony, as will not plead or do refuse to be tryed by a Jury, to be so many houres

Coke 2. part. Institutes 47.

Verstegans Antiquities ca. 3.

in

in dying, and have no other drink but Kennel-water. hath enough of horror in it to be found fault with, if it were not the Law, and the only means to preserve the Authority of Laws and Judicature, and there were not room enough for men to avoid that direful way of punishment. Stamfords Pleas of the Crown.

For there was never since the blessing of Laws, Magistracy and Government came into the World, any legal liberty not to appear in Judgment, or not to be compelled to do right one unto another by Judges, and those that were in Authority commissionated by their Superiours. And if ever there had been such a liberty, it may be renounced or released by our own Acts, as in the entring into Bonds and Contracts one with another, wherein we oblige our selves to the performance of any thing, which the Laws of God and Nature do demand of us, the Obligees may dispense with it: And if the Law of Nature could have given us such a vast liberty, as some would pretend a right unto, the same Law of Nature doth in civil Conversation and Society give us a power sufficient to restrain it, and Oldendorpius in diffinit. Actionum.

make that which at the firſt was *meræ voluntatis* in our own wills, to be *poſtea neceſſitatis* a neceſſity, and out of any ſuppoſed freedom of our own wills or the power thereof.

Neither can any man by any rule of Law charge our Laws with oppreſſion, becauſe poſitive, or made in terror, or binding to ſtrict rules, to avoid arbitrarities or oppreſſion in the Judges, or rigour and ſeverity (as in ſome particular mans caſe, they may happen to be by an abuſe of them) but the fault is rather to be laid at the doors of thoſe who do violate and break them.

For an unlimited or abſolute liberty, and the *liberty of the Subject* are each unto other contradictory, and there are no Laws but do retrench, or take away ſome liberty which People had or took to do ill, or might be inconvenient to the publick good: For God the greateſt and wiſeſt of all Legiſlative Powers, did put the *Jews* who were, as he ſaith himſelf, as the *Bracelet upon his arm, and the ſignet upon his right hand*, under a Law of fourty ſtripes, and of *death if they diſobeyed the Sentence of the*

Judge

Judge. And yet we do find them in their Generations above two thousand years after in such an opinion of their freedom, as they thought nothing could be added unto it; saying, they were of the Seed of *Abraham*, and *never no Bondage*, and are yet above sixteen hundred years since bragging of those their Laws.

When *David* had slain *Goliah*, and might justly have expected the reward of having *his Fathers House to be made free in Israel*, as some of the promised rewards, he did not when he durst not lift up his hand against the Lords Anointed, believe it to have been such a freedom, as might exempt him from the duty of a Subject. 1 Sam. ca. 17. v. 25.

When our King *Athelstan* by his Charter gave Lands to St. *Wilfrid*, and the Church of *Rippon* in *Yorkshire*, in the words, *Als frelich as I may, and in all things be als free as Hert may think, or eych may se.* And King *William* the *Conquerour* granted the Earldom of *Chester*, to his Nephew *Hugh Lupus*, *Tenendum sibi & hæredibus ita libere ad gladium, sicut ipse totam tenebat Angliam ad Coronam*, to him and his Heirs, to be holden Dugdales 1. part. Monastic. 172, 173. & Blounts Nomolexic. in verbo Frodmortel. Spelman Glossar. in diatriba de Comitib.

holden as freely by the Sword, as he did himself hold *England* and the Crown thereof: Those very large Grants did neither free the Lands so given to St. *Wilfrid*, and the Church of *Rippon*, and that Earldom to the Earl of *Chester* unsubject the Owners, or give either of them (as our Records and Law-Books in the course of the after Ages will testifie) any liberty not to appear upon any Summons to the Courts of Justice, of our Kings and Princes: For *legalis & liber homo*, saith Sir *Henry Spelman*, hath in our Laws no other signification then, *Qui stat rectus in Curia non exlex, seu utlagatus non excommunicatus vel infamis*, &c. *sed qui in lege postulet vel postuletur*, who standeth right in the Kings Court is not outlawed, excommunicated or infamous, but may at Law sue and be sued.

Spelmans Gloss. In verbo legalis.

And it cannot be denyed, but that in order to Justice a Summons or citation only might be sufficient, and would certainly be most consonant to the ease and liberty of the People, if they were or could be so of one mind or inclination to Justice, as to obey the first Summons, either of the Parties com-

complaining, or the Courts of Juſtice commanding, or not make excuſes or delayes, hide themſelves or run away, or be loath to come to it, be ſo of one kind of affaires and buſineſs as never or ſeldom to be abſent, ſo alwayes provided of their Councel, Witneſſes and Evidences, as not to need any further time to make their neceſſary deffences, and to be of ſo much ſufficiency of eſtate, as to have wherewithal to make a ſpeedy anſwer or ſatisfaction: And that there were no ſuch pravity or incertainty in the wills and actions of men, as that the Creditor would be alwayes ſure to demand no more then what ſhould be juſt, and ſhew as much mercy, if there ſhould be occaſion for it, as the Debtor ſhould have need of, and that every man would be as willing to do right one unto another, as it ſhould be asked or demanded of him.

But that being not to be found in too many of the Sons of men, or the ſmalleſt Societies, nor was alwayes or is likely to be in the ſublunary and lapſed condition of mankind, ſome kind of compulſion was

necessary, and a lesser then what is now, or hath been most anciently practised, could not be to any purpose, unless we could content our selves, and take that to be a happiness (which would certainly never prove to be any to have Justice (which next to the Creation, and the mercy of all mercies, the Redemption of mankind, and the Divine Protection and Providence, is one of the greatest blessings which was ever imparted by God unto it, and is to the continual guard and preservation of our lives, liberties and estates is more necessary, and less to be wanted then our food, apparel, houses or places of rest, and is the great support of the being, and well being of all humane Societies) to be a meer speculation or empty word, for Schollars only to dispute of in the Schools of *Ethiques*; Or sit like Old *Ely* in a Chair, with *Why do you so my Sons?* and permit every man to deceive, & mischief one another, and render the Justice of the Nation to be nugatory, for the restraint now used of the Body of a Defendant, refusing to appear voluntarily, or upon a Summons or Citation, is not *in vinculis* or *Cippis*,

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in Chains or Fetters, not *ad pœnam* but *ad Cautionem*, and in so moderate and gentle a manner, and lessening of their liberty as it is but temporary, and when so done, is but after many delayes, threatnings, warnings and forbearings, and most commonly occasioned by their own default, or some long abuse of the Plaintiffs patience, and such a remedy of course taken, is no more, if rightly interpreted, then what common and right reason, necessity, and endeavour of right to be done did require. And when it is but *Majoris mali vitandi causa*, to avoid greater evils, is so little in derogation of publick liberty, as although it may for a time be something prejudicial to some particular man, it proves many times to be a special help unto many men, to recover their Debts or Money due unto them, the want whereof might otherwise be a cause of their own imprisonment.

And so long as any man is a Member of a Common-wealth, his liberty is to attend or depend upon the good of that Common-wealth, otherwise he may claim a liberty as a *Free-man*, but not as an *English-man*. Bacons Historical Discourse of the Government of England.

Nor

Nor could our Fore-fathers in the neceſſity of bringing, or compelling men to appear in Judgment, as well as of the preſervation of the alwayes very neceſſary Power, Authority and Juriſdiction of Courts of Juſtice, which do order and direct it ever, tell how to imagine that it ſhould be underſtood to be a *Tyranny*, to arreſt, attach or impriſon ſuch as ſhould refuſe to appear upon the *Summons*, or Proces of a Court of Juſtice, or be fugitive or like to run away, or that it ever was or can be deemed to be an oppreſſion, to enforce ſuch Perſons in a legal and orderly way to pay their Debts, and do that which God commandeth them to do, and hath no leſs Juſtice or conſcience in it, then to be conſtrained to do right one unto another, perform Covenants and Promiſes, and obey Magiſtrates and Laws in force, when the Book and Dictates of God himſelf, do accompt a Man wicked, that borroweth and payeth not, and the wilful deceiving of Men, in the not paying of Money due unto them, or not performing of Promiſes, is by good Divines and Expoſitors conceived,

Pſalm 15.

ceived to be a kind of theft, and reckoned to be within the meaning of the Eight Commandment, and to be numbred amongst the breaches and transgressions of it; and it is no *Tyranny* by the Law of Nature, for a Man to stay or lay hold of one who is running away with his Money or Goods, or for a Judge by the Common Law of *England*, to commit such as misbehave themselves by word or gesture, in their presence or a Court of Justice, or for a Creditor by the Civil Law, to Arrest or stay his Debtor, if he be running away before he can get a Warrant or Proces from a Judge. To punish Souldiers with death by the Law Military, for running away from their Colours, straggling in their March, or going above a Mile from the Army without licence; to Arrest or Imprison such as resort to unlawful Games, until they shall find Sureties, no longer to use or haunt any place where such unlawful Games are used; or to imprison Collectors for the Poor, refusing to accompt: And Sir *Edward Coke* in his Commentaries upon that part of *Magna Charta*, saith that

Ursinus Catechisme, & Major upon the 8. Commandment.

Laws of War.

23 H. 8. ca. 9

Coke 2. part. Institutes 52.

a Watchmans arreſting a Night-walker, or one that hath dangerouſly wounded another, or that keepeth Company with a notorious Thief, whereby he comes to be ſuſpected is lawful, and no breach of *Magna Charta*, although it be done without the Warrant of a Writ.

24 Eliz. ca. 15.

By what rule of right reaſon then ſhall ſo gentle, and neceſſary a courſe or way of compelling Men by Proces of Arreſt, to appear in a Court of Juſtice, in order to a Sentence or Judgment, when he may be bailed, be ſtyled a Tyranny or Oppreſſion? When it ſhall not be ſo called or eſteemed, to take a Man in Execution for not obeying or performing a Judgement, where he cannot be bailed; or ſhall it be Tyranny to Arreſt a Defendant, to oblige him to appear in a Cauſe or Action Civil, and none at all in a Criminal? An Oppreſſion or Tyranny to Arreſt a Defendant, to conſtrain him to appear in an Action of Debt, and none at all in an Action of Treſpas? Nay, rather is it not an Oppreſſion, to endeavour to defraud and injure Men, detain their Eſtates and Livelyhoods, withhold

hold from the Poor and needy their right, and undo the Widdows and Fatherleſs, by keeping away the Money which ſhould feed or keep them from ſtarving, without making ſatisfaction? or ſhall it be no Tyranny to do the wrong, but a Tyranny in a legal and ordinary manner, or way to ſeek to be relieved againſt it?

Or how can it be juſtly accompted to be a Tyranny, when no where elſe it hath been ſo eſteemed? but was ſo little believed to be a Tyranny or Oppreſſion by other Nations, or any thing leſs then right reaſon, as they have not only made uſe of the Proces of Arreſt, and Impriſonment of the Body in Actions of Debt, and other the like Perſonal Actions in theſe later Ages, but long before the Incarnation of our bleſſed Saviour.

Sigonius de Repub. Athen. lib. 3. ca. 4.

The *Athenians* had their Bailiffs, Serjeants, and Apparitors to bring Defendants into their Courts of Juſtice, and the Plaintiff might himſelf hale or draw the Defendant by force into the Court, if he would not willingly come; but if he could put in two ſufficient Bail

Rous. Archeologia Attica lib. ca. 4.

or Sureties, he was dismissed.

And howsoever there were at the first amongst them, and the Men of *Sparta* some harsh and cruel way of scourging and whipping of Debtors, and other punishments and severities used; and their Law-makers and Magistrates were much troubled, to appease and reconcile the interests of the Creditors, and necessities of the Debtors, they could notwithstanding very well content themselves, and think their liberties to be sufficiently provided for, by this gentle and secure way of Proces, to compel Defendants *Judicio sisti*, to appear in Judgment.

CHAP.

CHAP. XI.

That the wiſeſt of the Grecian *Commonwealths* Athens *and* Sparta, *thoſe great Contenders for Liberty and Preſervers of it, did in their eſtabliſhments and Methods of Juſtice, neither underſtand or ſuſpect any Tyranny, or Oppreſſion to be in the neceſſary & moderate uſe of the Proces of Arreſt.*

FOr the Uſury being very great and exceſſive, the Poor plowed the rich Mens Lands, and yielded the rich Men a ſixth part of their Crop, for which cauſe they were called *Hectemory*, and Servants; borrowed Money at Intereſt upon Gage of their Bodies to ſerve it out; and were by Law, if they were not able to pay them, delivered to their Creditors, who kept them as Bond-men and Slaves in their Houſes, or ſent them into ſtrange Countries: Many for poverty ſold their Children to their Creditors, or were inforced to forſake their Country; Parellel in many things Plutarch. in vita Solonis.

things or ſomething near to that the Children of *Iſrael* had long before in Cuſtom, (for from the *Phenicians*, for their learned Mens travails into *Egypt*, they might have borrowed it) in the borrowing and lending of Money, and forcing Men to perform their Contracts.

So as there ariſing at *Athens* a great Sedition amongſt the People, to ſet the men indebted at liberty, redeem thoſe who were adjudged to be bond, make a new diviſion of Lands amongſt them, and to turn up the whole State and Government. *Solon* one of the wiſeſt Legiſlators that many Ages before or after had met withal, a contemporary with *Jehojakim*, King of *Juda* or living very near the time of his Reign, though unwilling to meddle, or endeavour the appeaſing of it, becauſe he feared the covetouſneſs of the one part of the People, and the arrogancy of the other, was notwithſtanding, at the Requeſt of the wiſeſt Men of the City content to intermeddle in it; and therefore after he had refuſed the Kingdom, for fear of the name of Tyrant, and was choſen Governour, to be the Reformer

former of the rigour of the Laws, and to be the Temperer of the State and Common-wealth; by consent and agreement of all Parties ordained, That all manner of debts past should be cleared; no man should ask his Debtor any thing for the time past; nor lend Money to Usury upon Covenants, for the Body to be gaged for it, and raised the value of the Money and the Pound of Silver, which was seventy-three Drachmes, up to a hundred.

Which offended the Rich, because they were enforced to cancel their Bonds, and the Poor because all Lands and Possessions they gaped for, were not made common; yet notwithstanding shortly after having some taste of the benefits of his Ordinance, they chose him General Reformer of the Law, and of the whole State of the Common-wealth, without limitting his Power; whereupon he having made many good Laws, but finding some to praise them, others mislike them, and some coming daily to him to expound his meaning; and considering therefore how it would get him envy or ill will, either to refuse or yield

unto

unto it, resolved to get himself out of the People, and to shun their groanings and complaints, betook himself to be a Master of a Ship, asking licence, to retire himself for ten years beyond the Seas.

But in his absence a great Sedition arising, *Pisistratus* a Tyrant was made choice of by some of the People; and the City notwithstanding they kept *Solon's* Laws and Ordinances, desiring a change, either Parties hoping their conditions would mend by it, and that every of them should be better then their Adversaries. *Solon* returning, speaks unto every one of the Heads of the Faction apart, and tryes if he could reconcile them together; but though he was much honoured and reverenced by the People, seeing the Poor tumult, and the Rich fled, for that *Pisistratus* coming into the Market-place, and feigning himself to be wounded by his Adversaries, for that he stood with them about the Government of the Common-wealth, had put the People into an uproar, and obtained a Guard of fifty Halbardeers, and a Mace to be carried

carried before him, and aſpired to be King, went home to his Houſe, took his Weapons laid them before his Gate in the midſt of the Street; ſaid, He had done all he could poſſible, to defend the Laws and Liberties of his Country; and from that time forward betook himſelf unto his eaſe, and never more after dealt in matters of State or the Common-wealth.

Very long after that (there being it ſeems no way or expedient in the mean time found out to take away that ſeverity) upon complaints made to *Lucullus*, who was Governour and Captain General for the *Romans* in thoſe Parts, that the Fathers were driven to ſell their Sons & Daughters to pay Intereſt, and yet were in the end adjudged to be Bondmen, and Slaves to their cruel Creditors, who impriſoned them ſet them on a rack, or in the Stocks, or upon a little braſen Horſe, and made them ſtand naked in the heat of Summer, or cold of Winter; He abated the Monethly Uſury or Intereſt to a hundreth part of the principal Debt, and ordained that the Uſurer and Creditor ſhould enjoy the fourth part of the Profits and Re-

Plutarch. in vita Luculli.

venges of the Debtor, till he was satisfied; and that they which took Usury upon Usury should forfeit the whole: Which was reckoned, saith *Plutarch*, to be as a great refreshing, and deliverance of the People, who all this while were not found to be complaining against the Law of Citing and Compelling men to appear in Judgment; being a part of the Laws of the Ten Tables, which *Solon* is said to have compiled, but observed it as a Law of publick use and necessity, giving no manner of disturbance at all unto it.

CHAP.

CHAP. XII.

The Troubles and Seditions of the People of Rome, *concerning the Whippings, Scourgings, selling for Bond-slaves, and other cruelties used by Creditors, in the suing and prosecution for their Debts, and the Troubles and endeavors of the Magistrats and Senators to appease them.*

AND was so little believed by the *Romans* to be a Tyranny, as when some Seditions and Commotions had been amongst them, occasioned by the greatness of Usury, cruelty of Creditors, Whipping, Scourging, Slavery, and villanous Usage of imprisoned Debtors they did acquiesce, and submit to the use of the Proces of Attest, to enforce Men to appear in Courts of Justice.

And when at *Rome* two hundred fifty-nine years after the building of that City, being about four hundred ninety-two years before the coming of *Christ*, an old Captain

or Commander coming into the Town-houſe or Market-place, with the Arms or Enſigns of his Anceſtors, ragged Cloaths, a pale famiſhed and meager countenance, his beard and hair overgrown and baring his breaſt, ſhews the wounds received in the Wars, tells the People he had loſt all his Goods and Eſtate, Taxes had impoveriſhed and brought him into Debt, and he had been carried of his Creditors not only into Bondage, but into Priſon and a place of Torment, and ſhewed his back wounded and gored with ſtripes.

Livi Dec. 1. lib. 2.

Whereupon a great Tumult and Sedition ariſing amongſt the People, the Senat were afraid to ſit, and upon the News of an Invaſion of the *Volſcians*, were by the People bid to fight for themſelves: But upon promiſe, that no Creditor ſhould take away their Goods, or Sell them, or Arreſt or take away their Children, as long as they were in the Camp, they were liſted and pacified; but that War ended, and another ſhortly after with as good ſucces, they that were bound before, were delivered over to their Creditors for Debt, as

alſo

alſo others that were not bound or impriſoned before.

Shortly after the People ſeeing a Debtor ſued, and brought to the Bar, flock together, and make ſuch a clamor as the Conſuls Sentence could not be heard; and ſingle out the Creditors and miſuſe them, ſo as the fear of the loſs of liberty was tranſlated from the Debtors to the Creditors, and the People being diſcontented refuſe again to muſter; whereupon the Conſuls, by advice of the Senat, ſeek to force them; but one of them being ſummoned by the Conſul to appear, ſtood ſtill and refuſed, the Conſul ſends to attach him, the People reſcue him; the Senators cry ſhame of the indignity, and run down from their Seats to aſſiſt the Serjeant: Yet for all this ſtir, ſaith *Livy* the Prince of Hiſtorians, it was not thought convenient to take away all keeping of Credit with the Creditors. But *Valerius* being choſen Dictator, upon a promiſe much like that they had before, procured them to muſter: Thoſe Wars ended, the Dictator moved the buſineſs again in the Senat, concerning thoſe that were bound in Pri-

Prison for Debt; but they refusing to order any thing in it, gives up his Dictatorship, and the People thinking he did it for their sakes, follow him home with praises. The Sedition increaseth again, and was laid aside; after that they mutiny again, and withdraw out of the City into the mount *Aventine*, and begin to fortifie; but upon *Menenius Agrippas* Oration, and comparison of the mutiny of the several parts of the Body against the Belly, they come to an agreement; and amongst other conditions it was granted, that they should create two Tribuns of the People, to assist them against the Consuls, and that their authority, by an Oath to be taken amongst them, should be sacred and inviolable.

About fifty years after, the Tribuns of the People were at discord with the Consuls, for that the Commons were not suffered to make Laws, and though both sides agreed it, to be a matter most equal for their liberties, that Laws should be made by the Commons and Senators, yet they differed about the legislative power. Whereupon Embassadors were sent to *Athens* and *Sparta*

Livy lib. 3. 199.

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(when they had agreed of some Laws, but could not accord who should be the Law-makers) to learn and get copies of the excellent Laws of *Solon*, and the Laws and Customs of other Cities of *Greece*; after whose return, and much rejoycing for the bringing of the Copie of *Solon*'s Laws, the Twelve Tables by them, and others well skilled in those Forreign Laws, were framed four hundred & forty years before the coming of *Christ*, by Ten Men or Magistrates, created by the People as a Committee to peruse those Laws, amongst which was that Law brought from *Athens*.

Dionis. Halicarnassæus lib. 10. Livii Decad. 1. lib. 3. Pomponius de origine Juris lib. 2. §. 4. Isidorus 5. orig.

Qui petebat debitorem conveniebat atque ut se in Jus sequeretur admonebat, si is sequi noluisset eum in Jus ducebat, sive rapiebat verum ne injuriam facere, videretur ante aliquem ejus actionis testem faciebat capta, scilicet hominis forte intervenientis aut presentis auricula rogabat eum licetne antestari, id est, possum ne testem sumere si respondebat licet, tum adversarium frustrantem, aut fugientem injecta manu ad Prætorem trahebat atque hoc faciebat auctoritate XII. TABULARUM, Sic enim in iis erat SI IN JUS VOCAT

Sigonius de Judiciis lib. 41. ca. de in jus vocatione Aulus Gellius Attic. noct. lib. 20. ca. 1. Cujacius lib. 10. ca. 10.

QUEAT

Gothofredus in fragmen 12. Tabularum.

QUEAI NIT ANTESTAMINO IGITUR EM CAPITO SI CALVITUR PEDEMVE STRUIT MANUM ENDO JACITO: If a man had ſummoned or demanded of another to do him right, and to appear in the Court; if he refuſed to follow him, *nulla interpoſita mora*, immediately or without delay, he might, leaſt he ſhould ſeem to do him wrong, take Witneſs of the next man he met, *manum injicere & per vim in jus rapere*, lay hands upon him and inforce him; which the Laws or Authority of the Ten Tables did warrant. But if he was ſick or aged, and not able to go, then he which ſummoned him was to provide him an Horſe or Wagon; thoſe Laws directing, that *SI MORBUS ÆVITASQUE VITIUM ESCIT QUI IN JUS VOCABIT JUMENTUM DATO SI NOLET ARCERAM NE STERNITO*; That if he was ſick, or ſo aged as he could not go, he was to have a Horſe provided for him to ride upon; and if he ſhould refuſe that way to go, he was to be put up in a cloſe Waggon, and carried whether he would or no.

Sigonius de Repub. Athen. lib. 1. de judiciis. Gothofredus in Fragmen. 12. Tabul.

Gellius lib. 20.

Which the *Romans* thoſe grand Aſſertors of

of liberty, and the most suspiciously impatient of any thing, which might disavantage or prejudice that high esteem which they had of it; neither did find any fault with, or had any reason so to do, when as those Laws of the Ten Tables (of which that above mentioned *de in jus vocatione*, or *de necessitate in jus eundi*, of constraining men that refuse to appear in judgment was one) were freely chosen and allowed of by the People of *Rome* before they were enacted, and with the greatest freedom of choice that any Laws could possibly be. For, saith *Livy*, *Ingenti hominum expectatione Populo ad concionem advocato, & quod bonum faustum felixque Reipublicæ ipsis liberisque eorum esset ire, & leges legere propositas jussere se quantum decem hominum ingeniis providere potuerit, omnibus summis infimisque æquasse*: In a huge expectation of the multitude, the people being called together or assembled, they were with wishes and prayers that it might be good and happy for the Common-wealth, and for them and their Children, required to go together and read the laws which were propo-

Livii Dcad. 1. lib. 3.

sed unto them, which they (meaning the *Decem viri*, or then Magistrates, of which number were the three which had been sent to *Athens* and *Greece* to learn their Laws) had so far as Ten men with all their wisdom could foresee and provide, indifferently devised for all men: *Sed quia plus pollere multorum ingenia consiliaque in animis versarent secum unamquamque rem agitarent deinde sermonibus atque in medium, quid in quaque re plus minusve esset conferrent eas leges habiturum populum Romanum quas consensus omnium invasisse, nec jussisse latas magis quam tulisse videri posset.* But for as much as the wits and heads of many men might see further, and better advise, they gave them leave to consider and ponder every particular, and to reason together from point to point, and deliver their opinions openly, what was short, wanting, or superfluous in every Article; and what Laws an universal consent of the people should bring in, those should be enacted and none other, that it might appear they were not so much to approve of them, & give their assent after they were propounded, as to propose & prefer them

Sigonius & A. Gellius Attic. noct.

their

their own selves: *Cumque ad rumores hominum de unoquoque legum capite edito satis correctæ viderentur Centuriatis Comitiis decem Tabularum leges perlatæ sunt, qui nunc quoque in hoc immenso aliarum super alias acervatarum legum cumulo fons omnis publici privatique est Juris.* And when as they were thought to be sufficiently corrected, as every one spake to the Titles and Chapters thereof, in an Assembly of all the Centuries and degrees of men, the Laws of the Ten Tables were enacted and established; which even at this day, saith *Livy*, amongst that infinite number of Laws heaped one upon another, are the very Well-spring and Fountain of all Justice, both publick and private.

Livii lib. 3. 110.

But the next year after, the people finding the *Decem viri* growing insolent, to determine matters at home before they gave Sentence openly, and usurping Kingly Government, begun to repent themselves, of putting the power of appeal out of themselves, tumult and protested against the *Decem viri*, or Ten which they had chosen; saying, They had created them Magistrates, only for the publishing and enacting

of certain *Laws*, but they had now no Justice in the City: And *Appius* one of the Ten, having ingrossed into his hands the power and disposing of his Partners, helps on the Tumult by a business that happened, upon his lusting after a young Maid, the Daughter of *L. Virginius*, a Commander of good note in the Army, and setting Mr. *Claudius* to claim her as his Bond-woman, who laying hands on her in the Market-
Lib. 3. 117. place, cited her to appear, and commanded her to follow him, otherwise he would force her; the People flock together, but the Plaintiff tells them, they need not trouble themselves, for he proceeded according to Law, and would do nothing by force, cites her again to appear before *Appius*, and the People perswade her to follow, where the cause by reason of the expostulation of *Icilius* to whom she was betrothed, not coming to hearing; that day she was bailed and suffered to go under Sureties till the next; but the second day, *Appius* without hearing the Defendant or her Friends, decreed that she should be a Bond-woman to *Claudius*, who going to seise her finds the

Peo-

People resisting him, *Appius* sends a Serjeant to assist him, *Virginius* in a rage killeth his Daughter, that she might not come into the Oppressors hands, and a great uproar happening by the People, Kindred, and Friends of the Maid; *Appius* cites *Icilius*, the Spouse of the Maid, as an Author of the Tumult, and for his contumacy in not coming, caused him to be attached and carried to Prison; but *Valerius* and *M. Horatius*, two popular and powerful Senators, thrusting back the Serjeant, said, If *Appius* had any thing to charge him with by order of Law, they would Bail him; but if he went about to offer violence he should meet with his match: After that *Appius* himself is arrested, who desiring to be bailed, and not to be put in Prison or lye in Chains, by all the Friends and pittyful speeches he could make, could not obtain it; For that he had, saith the Father of *Virginia*, so much against all order of Law denyed the bailing of her, who therefore commanded him to be carried to Prison, as a person attaint and convict: The Tribun of the Commons set him a day to plead for himself, and make

his

his answer, but *Appius* before that day killed himself, his Goods were confiscated by the Tribuns; the rest of the *Decemviri* fled and were banished, and all their Goods confiscated: And the Ten Tables having two more added to them, by the appointment of the Tribuns, are set or hung up openly to be seen, engraven in Brass.

Pomponius lib. 2. de Origine Juris.

The *Romans* having long before the compiling of the Twelve Tables, used both to arrest and compel Men to appear in Judgment, as is manifest by their manner of giving Bail before such time as *Appius* decreed to take Bail in the case of the Daughter of *Virginius*, which was *ex veteri Jure*, an Old Law and Custom amongst them, saith *Pomponius*.

And this great Commotion of the People having nothing at all in it the while of complaint or action against the Laws of citing and compelling men to appear in Judgment, and of putting them to Bail in the *interim*; but a confirmation or allowance rather of them.

Thirteen and five years after that *Marcus Manlius Capitolinus*, so named because he

he had saved the City of *Rome*, and the Capitol from ruine and spoil; growing ambitiously discontented, & not contenting himself to deal in the Laws *Agraria* about the Division of Lands, which had alwayes ministred occasions of Seditions, began to intermeddle between the Debtors and Creditors; and to overthrow, saith *Livy*, all keeping of Credit. Livii lib. 6. 225.

And seeing a Centurion condemned in an Action of Debt, and carrying to Prison upon an Execution, with a rout and crew of his Followers, rescues and takes him from the Officers; and crying out that his merits in saving the Capitol had been to little purpose, if he could abide to see his Fellow-Souldier carried away captive, did in sight of the People pay down the Debt, set to sale his own Land, and caused it to be openly cried, that as long as he had one foot of ground, or any thing else left, he would not see one of the People condemned, & upon Execution carried to Prison and stirred up such a Sedition in the City as the People followed him as the Protector of their liberties; whereupon the Dictator has being

being sent for from the Army, assembled the Senate, caused the *Ivory* Chair of State to be set in the Common-Hall, and sent a Serjeant for *Manlius*, who with a great retinue of his party presents himself before the Tribunal; and tells the Dictator, that now he saw he was created Dictator not against the Common Enemies, but himself and the Commons of *Rome*, for he did see well that he professed to maintain and bear out the Usurers against the Commons: Whereupon, after many insolent speeches, the *Dictator* commanded him to be carried away to Prison. *Manlius* cryes out, *O ye Gods and Goddesses that inhabit the Capitol, suffer ye thus your Knight and Defender to be misused by his Adversaries?* But, saith *Livy*, though every man that saw it was greatly moved, the City as most patient of all other Cities, to abide any just and lawful Commandment of the Magistrat, so contained her self, as neither the Tribuns of the Commons, nor the Commons themselves durst intermeddle in it, though many of them did put themselves in mourning, let their heads and beards grow in their grief and

Livii lib. 6. 226, 227.

and mourning for it, and with ſad and heavy chear kept commonly about the Goal-door; but after a while threatned to break the Priſon, continued or rather increaſed their Sedition, and never left till the Senate releaſed him: Whereby the Mutiny was never the more ended, but rather a Captain given them to maintain it, the People hope to be rid of Uſury, *Manlius* calls them home to his Houſe, exhorts them to maintain their Liberty, and to hinder and cry down Dictatorſhip and Conſulſhip, and Proces and Courſe of Law for Actions of Debt; the Senat and Tribuns in Conſuls Authority, and the Tribuns of the Commons alſo, ſeeing that in the loſs of the publick liberty their own power likewiſe would come to an end, being much troubled at it, by advice of the Senat reſolve to Arreſt him, and thereupon ſend and ſerve Proces upon him, to anſwer at a day appointed; which being come, he produceth four hundred men, for whom he had laid out Money *gratis*, ſaved their Goods from Port-ſale, and kept them from the Bondage of their Creditors after they were

Livii lib. 6. 228, & 229.

Livii lib. 6. 230.

condemned; reckoned and ſhewed openly the Spoils of Enemies by him ſlain or diſarmed, to the number of thirty, gifts beſtowed on him by Generals to the number of forty; whereof there were two mural Garlands for ſcaling of Walls, and 8 Civick Coronets, for ſaving the lives of Citizens in danger, preſented many in perſon whom he had reſcued out of the Enemies hands, nominated *Servilius*, at that inſtant General of the Hoſe-men, ſtript his breaſt bare ſhewed the ſcars received in the Wars, looked towards the Capitol, and praid to the Gods, to give the People the ſame mind to help him as he had to help them; but the People notwithſtanding being called out by the Tribuns, and drawn out by Centuries or Wards, into a place where they might not behold the Capitol, for otherwiſe it was thought impoſſible for them to get leave of their love and pity to him, to find the Indictment againſt him: And the accuſation prevailing more then compaſſion, he was condemned for Sedition, holding Conventicles with the multitude, and his over much largeſs, to be

thrown

thrown down the Rock *Tarpeja*, where himself had won so great glory by defending the Capitol; his own Kindred making also a Decree, that none of that Race should after bear the name of *Marcus Manlius*. Livii lib. 6. 231. & Plutarch in vita Camilli.

The Tribunes after that complain, that the Senate sought to avoid the exhibiting of publick Records and Books, which gave testimony of the valuation of every mans substance to the worth, because they would not have the Sums of Debts to be seen or shewn, which might shew that the one part of the People were eaten up and devoured by the other, and that if the Commons would call to remembrance their Ancestors liberty, they would not suffer any Citizen of *Rome* to be awarded to Bondage for Debt, nor any musters to be taken until a view were made, and just accompt had of every mans Debts, that each man might know what he had of other mens Goods, what remained of his own, whether his body were left free, or at the mercy of his Creditor to lye in cold Iron or baleful Prison; on the other side the Censors alled- Livii lib. 6. 236.

ged, that the Debtors cautelously would not then keep their Credit and make payment: Which hire and salary or reward of Sedition, saith *Livy*, shortly after stirred up a mutiny, for that when many were adjudged to be kept bound by their Creditors, the Tribunes would not suffer those that were condemned to be led to Prison, nor the younger sort of the Commons enter their Names in the Muster-masters Book: Howsoever the Wars coming on they leave their mutinies; but after the Wars ended, Tribunes Military with Consular Authority were equally chosen, from out of the Nobility and Commons; And the year following begins with Discords, Seditions, and Broils (for no better were they then termed) concerning Debts, for the true Inquisition whereof, and to know to what Sums they amounted, *Sp. Servilius*, *Priscus*, and *Q. Clælius Siculus* were made *Censors*, but stopped by occasion of an Invasion of the *Volscians*, notwithstanding the fear and terror whereof; so little were the Civil Discords appeased, as the Tribunes of the Commons extended their power with more

more violence, to hinder the leavy of Souldiers until they had indented and capitulated with the Senate, that ſo long as the Wars laſted, no man ſhould contribute or be charged with any Impoſt, or be ſued in any Action of Debt, whereupon the Commons are content to muſter, two new Legions were levied and enrolled; and to War they go with the *Volſcians* their Neighbours; but as ſoon as all was quiet from Enemies abroad, they began a freſh to be ſued and troubled by their Creditors at home, and having ſmall hope to be releaſed of their old Uſury, fell into a new Sedition, by reaſon of a Contribution impoſed by the Cenſors for making of a Well, which they had ſet out to be made of ſquare Aſhler ſtone; but being forced to yield thereunto, and to go to War againſt the *Volſcians* and *Latines*, after ſeveral Victories obtained, and the Armies returned to *Rome*, the calamities of the Commons grew every day more and more, for they wanted means and were not able to pay for the Intereſt, that needs muſt be paid; and when nothing was to be had to make ſatis-

Livii lib. 6. 239, 240.

faction

faction, out of their Goods were adjudged and awarded to satisfie their Creditors in their Bodies. Which gave occasion to *M. Fabius Ambustus*, a man of much repute with the Commons, upon the proud discontent of a younger Daughter, not being married so well as her elder Sister, whose Husband was a Tribune Military, plots with his unpreferred Son in Law and *L. Sextius*, who hoping to compass some alteration in the State, by reason of the excessive Debts that men were grown into, got themselves made Tribunes of the Commons; upon which advantage *C. Licinius*, the Son in Law of *M. Fabius Ambustus*, and *L. Sextius* propose Laws touching Debts, that when so much was defalked and deducted out of the Principal, as had been paid for the use and Interest, the residue should be paid by even portions in three years; that no man should hold in possession above five hundred Acres of Land, and that there should be no election of Tribunes Military but of Consular; with which the Senate being much troubled, could find no other remedy but the negative voice of some

Livii lib. 6. 241.

of

of the Tribuns to ſtep between, and had wrought ſome of their own Brotherhood to do it, who as ſoon as they ſaw the Wards or Tribes, called forth by *Licinius* and *Sextius* to give their Suffrages, would not ſuffer thoſe Bills to be read or paſs by the Commons; whereupon when the Nobles began to chooſe the Tribuns Military, *L. Licinius* and *Sextius* croſſed them, ſo as there was no election at all, but of *Ediles* and *Tribunes* of the Commons; for *Licinius* and *Sextius* being choſen Tribunes again, ſuffered no Magiſtrates of the Chair, or of State to be created. After that other Wars enſue, and with much ado an Army is levied, *Sextius* and *Licinius* the publiſhers of thoſe Laws were the eighth time made Tribunes of the Commons, and *Fabius* alſo a Tribune Military, five in eight of the Tribunes of the Commons earneſtly, and like men beſtraught of their wits, urge for to have thoſe Laws enacted; *Sextius* and *Licinius* with part of their Tribune Brethren, and *M. Fabius* the Military Tribune being, ſaith *Livy*, their Crafts Maiſters, and knowing well enough by ſo many Lib. 6. 242.

many years experience, how to manage the minds of the Commons, demand of them how every one of the Senate, and other Rich men, could in equity hold the Land well near of three hundred Citizens, and a Commoner have hardly ground enough to build him a House upon, and to serve for a place to bury his Dead, whether the Commoners oppressed with Usury should yield their Bodies to bear Irons and suffer Torments, unless they pay the Interest before the principal? and that daily they should in whole Companies be had away from the bar, and condemned to thraldom; and alledge that the Commons could never be relieved, until they make one out of their body a Consul, who might be equal in the Soveraign command and power of the Sword, and maintain and protect their liberty. The next year the Legions being returned home, the same Tribunes of the Commons are chosen, and the same Laws again proposed; the Senate when they saw the Tribes called, and none
Lib. 6, 243. of the Tribunes step forth to stop their proceedings, began to be exceedingly afraid,

fraid, and choose a Dictator, the Tribunes of the Commons call a Common Hall, & summon out the Wards to give their voices; whereupon after the Laws were propounded, and some of the Tribunes denyed them *Camillus* the Dictator, their good old successful General, formerly the Saviour of their Common-wealth against the *Gaules*, a man of undoubted honour and integrity, and the Darling of the People, sided with the gain-saying Tribuns, and stickling to maintain their intercession and gain-saying authority, sent his Lictors and Serjeants to command the Commons to depart, threatning withal that if they proceeded thus like Conquerors to give Laws, he would take a Military Oath of all the youngest sort, and presently lead an Army forth of the City, which put them and their Captains and Ringleaders in so great a heat of contention, as the Dictator terrified with some unlucky signs of the Birds, gave up his office; mean while in an Assembly of the Commons summoned by the Tribunes, the Laws were passed concerning Lands and Usury; howbeit

shortly after it was found that *Licinius* had a great many more number of Acres of Land than his own Laws permitted. After this another Dictator was chosen, who nominated *Licinius* General of the Horsemen, who with *Sextius* at the next Election day for the Tribunes of the Commons so demeaned themselves, as seeming to be weary of the place, they were the more eagerly desired by the Commons, and alledged thereupon, that the Commons themselves were they that hindred their own good, who might presently, if they would, have their City, their Common Hall, and places of Assemblies freed from those Creditors, and their Lands recovered again from the unjust Landlords; that it stood not with the modesty of the People of *Rome*, to require to be eased themselves of Usury, & set in possession again of the Lands with-held from them, and to leave those old Tribunes, by whose means they had gained those commodities to shift for themselves without honour or hopes thereof; and that if the Commons should not resolve to speak affirmatively to those Laws,

Livii lib. 6. 245.

it

it would be to no purpoſe to chooſe any Tribunes, neither would they accept of the Tribuneſhip, neither ſhould the Commons have thoſe Laws ratified, which were already granted: But upon an Oration or Speech of *Appius Clandius* a Senator, ſetting forth the inconveniences of what was propounded, and that by what had been already wreſted by the Tribunes, *All Credit in borrowing and lending, and taking and putting forth of Money would be aboliſhed, to the deſtruction of all humane Society, Commerce and enter-courſe whatſoever.* The matter was adjourned, and the publication of thoſe Acts cut off and deferred; but the ſame Tribunes *Sextius* and *Licinius* being choſen again the Tenth time, got a Law enacted, that of the *Decem viri* for Church & Eccleſiaſtical matters ſome ſhould be elected of the Commons, with which they were ſo well content, as they laid aſide the buſineſs of Tribunes Conſular, and gave way for the creating of Tribunes Military; and the Venerable *Camillus* being almoſt fourſcore years old, is the fifth time choſen Dictator, but after the Wars ended with the *Gaules*, who had invaded them, Livii lib. 6. 247. Livii lib. 6. 248.

it welcomed home with a hotter sedition in the City; where after many sharp bickerings and contentions, the Senate and Dictator were forced to accept of the Tribunes Laws, and *Sextius* was created Consul out of the Commoners; but by reason that the Nobles refused to give their consent, that *Camillus* should leave his place of Dictator, the Tribunes of the Commons, as *Camillus* was set in his Chair in the Town-hall hearing of causes, sent a Serjeant to him, who commanded him to follow him, and laid violent hands upon him, to carry him away by force; Which made an uproar, saith Livy, was never before seen in the Common-hall or Town-house, *Camillus* Friends driving the Serjeant behind the Chair, and the People crying out from beneath to the Serjeant, to pull him out: Notwithstanding all which he would not resign up his Office, but taking with him those Senators which were about him, went towards the place where the Senate was wont to be kept, but before he could go in, he returned back again to the Capitol, and made his prayer to the Gods, that it would

please them to bring his Troubles again to a quiet, and made a solemn vow and promise, if those Troubles might be pacified, to build a Temple to *Concord*. And the matter coming after to be debated before the Senate, there hapned such an hot contention and diversity of opinions, as the easier way carried it, which was to grant the Common Peoples desire, that a Commoner should be chosen Consul with a Noble Man, and it was agreed, that the Common People should be content that the Nobles might out of the *Patricii* create a *Prætor*, or Lord Chief Justice for *Oyer and Terminer* in causes within the City, which being by the *Dictator* published to the People, they were so joyful as they brought *Camillus* home to his house, with great shouts of joy and clapping of hands; and being the next morning assembled in the Town-house or Market-place, decreed, that the Temple of *Concord* should be built at the Commonwealth's charge, that some Festival dayes should be solemnized, and Sacrifices made unto the Gods in every Temple of the City, to give them thanks, and that the People should

Plutarch. in vita Camilli.

should in token of joy wear Garlands upon their heads for this reconciliation.

About nine years after upon a new Sedition of chooſing of Magiſtrates, and for want of them an *Interregnum* happening, the Commons loſt their Conſulſhip again, and two of the *Patricii* began to govern, who thinking to continue it as formerly in the Nobility, had the trouble of another Sedition, wherein the People after many ſtirs and meetings not prevailing, two other Conſuls of the Nobility were elected. And though the Uſury or rate of Intereſt was much abated, yet the poorer ſort of the People being over-charged with the payment of the principal, became bound and thrall to their Creditors, inſomuch as the Commons, in regard of their private ſtreights which they were driven unto, never troubled their heads at all any more with the making of Conſuls.

Livii lib. 7. 262.

In the end of the next year after, the contention betwixt the Senate and the Common People brake forth, concerning the Election of the Conſuls: whereupon the Tribunes of the People flatly denyed to

Ibid. 263.

ſuffer

ſuffer any Aſſembly to be holden, unleſs they might have one of the Conſuls to be choſen out of the Commons, according to the Law *Licinian*. And the Dictator as ſtoutly bent to denye it, the Election was adjourned, and the Dictator leaving his Office, the matter grew again to an *Interregnum*, and the Interregents finding the Commons to be alwayes maliciouſly ſet againſt the Senators, ſucceeded one after another until the Eleventh *Interregnum*, when the diſcord and variance ſtill continuing, the Tribunes called on hard for the Law *Licinia*; the Commons had an inward grief that ſtruck neares to them, upon the exceſſive Uſury that ſtill increaſed, and each mans private care and grievance brake out in their publick contentions and debates; the Senate thereupon weary of ſuch Troubles, commanded *L. Scipio* the Interregent for the time, being for concord and unity ſake, to obſerve the Law *Licinia*, in the Election of the Conſuls, ſo as *P. Valerius Publicola* had joyned with him in fellowſhip of Government, *Cajus Martius Rutilus* one of the Commons.

Who

Who labouring to ease the matter of Usury, being that which hindred the general agreement, set a course to do it, so as the long or old debts, which were more intangled rather in regard of the Debtors *slackness* and *negligence* then *want of ability*, the City out of the common Stock crossed them out of the Book, by setting up certain Counters or Tables, with ready coin in the publick Hall, provided that good Security were given to the City, by Suretie put in beforehand, or else the Goods of Men valued at indifferent and reasonable prices were to discharge the Debts, so as a great number of Debts, without the complaint of either Party, was satisfied and paid.

Livii lib. 7. 267.

Two years after the Antient possession, saith Livy, of the Consulship was restored to the Senators; and about two years after that, the Usury coming but to half so much as it was formerly, the payment of Debts was dispersed, and ordained to be paid in three years by even portions, so as a fourth part were paid beforehand, some of the Commons being for all that pinched therewith

with, for that the Senate had more care to ſee Credit kept with the Chamber of the City, then of the difficulties of private Perſons, which was the better born in regard of the forbearance to muſter Souldiers, and call for Tribute.

About ſeven years after that, upon a mutiny of the Souldiers, in the Camp a Law was publiſhed by a Tribune of the Commons, that Uſury ſhould be made altogether unlawful; and after many unreaſonable demands, ſaith *Livy*, the inſurrection of the Souldiers, who compelled their Commanders to march againſt the City, was upon a Capitulation made as once before (ſaith that learned Hiſtorian) the Commons, and a ſecond time the Army had done with the Senate, that their mutiny and inſurrection ſhould not be made uſe of to their danger or diſhonour, it was appeaſed. Livy lib. 7. 279.

About ſixteen years after, being three hundred and thirteen years before the Incarnation or coming of *Chriſt*, *Papirius Publius* being bound for his Fathers Debt, & having conſigned himſelf a Priſoner to the Creditor, who ſuppoſing that he might abuſe Lib. 8. 301.

the young mans Body for Interest of his Money, began to tempt him with fair words and promises, afterwards to threaten him, and when that would not serve, commanded him to be stript naked and whipt; whereupon the young man all wounded and torn ran forth into the Street, and complained to all he met, of the filthy lust and cruelty of the Creditor; and thereupon a great company of People moved with the injury of the Usurer, and pity of the young Man, as also in regard of their own case and their Children, gathered themselves into the Market-place or Town-hall, and from thence towards the Senate-house; and the Consuls being upon this suddain uproar *Coacti*, saith *Livy*, compelled, to assemble the Senate; the People as the Senators entred in the Senate-house lay prostrate at their feet, as they passed by shewed the young mans back and sides; whereupon the Consuls were commanded to propose to the People, that from hence forward no person whatsoever, unless guilty of matters Criminal or Trespas (for *noxa*, the word used there by *Livy*, and *Noxales actiones* are

by

by the *Roman* and Civil Laws, and our *Bracton* also interpreted, to be matters and actions of Trespas as well as greater crimes) until he were condemned to punishment, should be bound in Fetters or Chains, and that the Goods of the Debtors, not the Body, should be *obnoxious* to the payment of the Money borrowed (which might better be ordained there than with us, or many other Nations, for that the *Romans* by their *Censors* did keep publick Registers of every mans Lands, Estate, and Lands; so, they that were in Bondage became released and enlarged; and order was taken for the time to come, *ne necterentur*, saith *Livy*, that the Debtors should not hereafter be bound or chained in Prison: Which if any shall misinterpret to be an absolute freedom of the Persons of the Debtors from Arrest, the *Roman* Records and Histories will be against them.

Livius in 4. Edit. apud Francofurt ad Mœnum Anno 1568. P. 441.

CHAP. XIII.

That this Order made to pacifie a Tumult was not perpetual, or ſo much as intended to extend to an abſolute freedom of the Debtors from Arreſt or reſtrainte of their Perſons, till they appeared in Courts of Juſtice or gave Bail to do it.

FOr a *Plebiſcite* or Law of the People, it could not be for they were not called together by Tribes or Wards, under the Authority of the Tribunes; or if they had ſo many Uſurers, and all that were either Rich men or Creditors, were likely to have been againſt it; And an Act of the Senate it could not be, for they were forced or affrighted to it, and it wanted the conſent of all the Peoples deliberation, and the juſt ſolemnities of it: For *ab exactis Regibus*, from the time of putting down Monarchy, till the Reign of *Tiberius Ceſar*, ſaith *Bodin*, the Senate alone had no power to make Laws, but only Annual Decrees

Sigonius de Antiquo Jure Roman. 120. Joannes Sarius Zamoſcus de Roman. Ant. Auguſtinus de S.C Rom. Bodin lib. de Repub.

crees or Ordinances: Which bound not the Common People (Ordinances or Decrees of the Senate (saith *Dionisius Halicarnasseus*, a most diligent Inquirer into the *Roman* Customes, having *Nullam vim legis nisi Populus probaret*, No force or effect of Law unless the People approved of it; *Et ea quæ Populus probaverat annua tantum erant, nisi rogatione ad Populum, vel ad plebem vim legis adipiscerentur*, And those also which the People did approve were but Annual, if by rogation or asking the People's consent, being called together by their Wards, it obtained the force of a Law, and without a rogation or demanding the Suffrage of the People was, as *Bodin* saith, ineffectual so as a Law, it was not because all the People were not duly called nor had agreed to it, and being no Law, could be no more then an Edict of the Consuls, or an Ordinance of the Senate; or if a Law (because we find it by *Paulus Manutius* reckoned for no less) was but temporary, and to pacifie and bring to their wits again the inraged multitude.

Dionis. Halicar. lib. 4, & 7.

Bodin de Repub.

Paulus Manutius de Legibus Romanis.

But whatsoever it was, it extended not

nor

nor was so much as intended to take away that necessary power of the *Prætor* or Magistrat, of coercing or compelling men to appear before them in Judgment, but was abrogated or continued but for that time or a little after, or not put in execution, a fate which many other enforced Acts or Orders of that Common-wealth came under; as that of the Law *Licinia*, or choosing of one of the Consuls out of the Commons; that of lessening of Usury at one time, or taking it quite away at another, which had their intermissions, the latter of which was so impossible to be kept, as by custom and mens necessities it came to be to no purpose, which the many Seditions of the People, which happened afterwards concerning Usury, and the more ease then abatement of it, may be enough to perswade us unto: For besides what may be observed concerning the enforcing of that Law, and the course taken to pacifie the People, the meaning of *Bona Debitoris pecuniæ creditæ non Corpus obnoxium esset*, That the Goods of the Debtor not his Body should be obnoxious or liable to the Debts, might probably

bably be understood to be, that the Goods of the Debtor should be sold or taken in Execution, for the satisfaction of the Creditor, as far as they would go, and that his Body howsoever should not be bound or lye in chains for it, and that those that were bound in Fetters or Chains were released from that kind of imprisonment, as may appear by the Body of that Law, or the perclose and conclusion of it; which only saith *Ita nexi soluti*, so those that were bound in Fetters or Chains were released, which must be understood to be by the Sale of their Goods; And for the time to come, singly relating to the matter of binding in Chains or Fetters, not as to the Sale or taking of Goods hath only these words, *Cautumque in posterum ne necterentur*; And for the future it was enacted, that for Money borrowed the Debtors should not be bound in Chains, which needed not have been if their Goods, and not their Persons had only been liable to Debts; the way of *Distringas* or attaching Men by their Goods (where they were not Fugitives, or had a certain or visible Estate, being

not

not then unusual, as may appear by what was done in the Case of the Senators, who had their Goods taken and distrained, for not coming upon Summons unto the Senate-house.

Which Law or whatsoever it is to be called, got so little allowance in the opinion of *Livy*, that most learned and ever approved Historian, as he gives it no better opinion in the reporting of it, but that upon occasion of an injury done to one Man, *A mighty bond or tye upon the People to keep their Credit was that day broken*: And it will howsoever be evident enough to any who shall but acknowledge that truth, which will every where meet him in his enquiry through the *Roman* History or Customes, that they did not by that Edict or Law abridge or take away the power of the *Prætor* or Judge, who though he was at first appointed and set up at the Request of the Tribunes and People, had two *Lictors* with Axes and bundels of Rods (a more terrible kind of Officer then our Serjeants or Mace-bearers) allowed to attend him in the necessary course of preserving that pow-

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et was put into his hands, to judge and determine of causes: For we may find *Sempronius* a Tribune of the People, about sixteen years after the pretended Law of prohibitting Men to be bound in Fetters for Money lent, to command *Appius* the *Censor* to be attached or committed to Prison for no criminal or hainous fact: That in the accusation and pleading of *Scipio Africanus*, about one hundred & twenty-two years after, concerning an Accompt of the publick Treasures, the Court was attended by *Lictors* or Serjeants, and a common Cryer; and that the Tribunes of the People themselves, in the absence of *Scipio Africanus*, when he sent his Brothers to appear for him, but failed to appear in Person, upon a longer day granted for the Process of the Law against him, to cry out, saying, *Dare we not now send Folk to fetch him*, being but a private Person, out of his Farm and House in the Country, and make him appear? unto whom not seventeen years ago, at which time he was General of an Army at Land and Admiral at Sea, we were so bold as to send Tribunes of the

Livy lib. 9. 339.

Livy lib. 38. 1017.

Commont, and an *Ædile* to Arrest and bring him away; that *L. Scipio* his Brother being after his death acoused and condemned, for not bringing to accompt some Treasures taken in the Wars, when some of *Scipio's* Friends had appealed to the Tributes of the People for their help, and remonstrated the many merits and services of him and his Family; the *Prætor* or Lord Chief Justice opposed, and said, That for his part, he could not do with all, but if the Sum wherein he was condemned was not brought into the Common Treasury, *He knew no other remedy nor what else to do, but command him as a condemned Person to be apprehended again, and led away to Prison.* And when the Tribunes of the People, all but *Titus Gracchus*, pronounced alone that they would not interpose, and that the *Prætor* might execute his Office and Authority, all the favour which *Gracchus* one of the Tribunes thought fit to do him, was to decree, that as touching the Sum wherein *L. Scipio* was condemned, he would not be against it, nor hinder the *Prætor*, but that he might use his power according to his place, and take

Plutarch. in vita Scipionis Africani.

Livy lib. 38. 1022.

take it out of his Goods as far as they would ſtretch; *but would never conſent, that he who had ſubdued the mightieſt Monarch of the world, and extended the bounds of the Roman Empire as far as the utmoſt ends of the Earth ſhould lye in Priſon and Irons.* Beſides how little that pretended Law, gained by a Tumult, prevailed againſt the Impriſonment of Men in Chains or Irons, after Judgment in Debt or other Civil Actions, or a bare Impriſonment without them, plainly enough appears, in the Cuſtomes and Uſages of thoſe times, held forth in the Oration made by *Publius Scipio Naſica*, another of thoſe famous Brothers, made to the Tribuns of the People in the behalf of *L. Scipio* his Brother, to keep him from going to Priſon, clearing up unto us the uſage of thoſe times, notwithſtanding that pretended Law; for there we may find him ſaying, *That which cannot be made of the ſubſtance and Goods of L. Scipio, they will make good on his Body.*

So that it will be abundantly evident, that all the before recited Toſſes, Commotions and Troubles of that grand Common-

wealth of *Rome*, and that People's humors and ignorance in that Popular Government, which made them to be restless as the Waves of the Sea, tormenting and inquieting themselves and their Magistracy; which continued until that Republique had, as *Tacitus* saith, tired it self *Civilibus discordiis*, and gained a rest from those publick disturbances in the Government and Monarchy of *Augustus Cæsar*, were more in regard of an horrid Usury & their Debts, and being constrained at the same time to pay Tributes, Muster, and fight for their Country then of their being imprisoned, and more for the chains and cruel manner of Usage, then for the Imprisonment it self, or restraint of their liberty upon actions of Debt, which without a renouncing of Justice, and all the hopes and benefits thereof could not be forsaken; And were therefore without the former severities of Bondage, Chains and Fetters, to be reckoned amongst the most necessary & excellent rules of Justice, void of all Tyranny. And was so liked and approved by that conquering and great Nation, as *Hermodurus* an *Ephesian*, who

Tacit. Annal.

Cicero lib. 1. Tusc. quæst. & Strabo lib. 14.

who had been Aſſiſtant to the *Decem viri*, in the Interpretation of *Solon*'s Laws, had his Statue erected in the *Forum* or Place of Juſtice; and were ſo continued & commended to after Ages, as in *Tully*'s time, which was almoſt four hundred years after the publick and univerſal conſent of the People and their Magiſtrates gained, and likewiſe after the pacification of the People's complaints of their burdens of Uſury, & the mercileſs uſage of the Creditors, thoſe Laws were had in ſo great a reputation & veneration, as that part of them *de in Jus vocando*, conſtraining Men to appear in Courts of Juſtice, was, as he ſaith, a *Parvis* learnt and ſung by him and other Children; and after that he came to be that great Orator and Lawyer, whoſe juſt praiſes and commendation the many Ages ſince, and a long courſe of time have taken a delight to remember, could have no other opinion of thoſe Laws, then that if all the learning and Libraries of the World were ſearched, thoſe of the Twelve Tables, *Si quis legum fontes & capita viderit, & auctoritatis pondere & utilitatis ubertate ſuperarent*, If any would enquire into

Cicero lib. 2. de Legibus.

into their reason and original, their authority and benefit considered, they would appear to be the best of all Laws.

Ammianus Marcellinus lib. 11.

And were so generally by after Ages well liked, as *Ammianus Marcellinus* long after speaking of them saith, That *Solon adjunctis Ægypti Sacerdotum satis justo moderamine legibus Romano quoque Juri maximum addidit firmamentum*, By the just and equal Laws, which he had made by the assistance of the *Egyptian* Priests, was a great means of the establishing of the *Roman* Laws.

And if they could have been truly charged with any Tyranny or Oppression, or so much as a Suspition of either of them, that Law *de in Jus vocando*, being a part of the Twelve Tables, could not as well as the rest have gained as it did, the constant approbation and good liking of the World, and come as it hath done from generation to generation unto these our present Times.

And it is a thing not unworthy of observation, and pertinent enough to be here remembred, that the *Romans* abhorring the cruelty

cruelty of the *Draco* or *Athenian* Laws, ordaining the Debtor after a Sentence or Judgment given against him, and a certain number of dayes limited, and a failer of payment to be cut in pieces and distributed to the Creditors (which cruel Law, ſaith *Quintilian*, *Mos publicus repudiavit*, The kindneſs of Mankind one to another could not endure to be put in Execution) did in lieu thereof, appoint a ſeiſure or Execution againſt the Goods of the Debtors, and that in the courſe and Proceſs of Arreſt. It was by a Conſtitution of the *Prætor* or Lord Chief Juſtice ordained (which unleſs in Caſes of Writs of Outlary, and where the Dores are not open is to this day obſerved in our Laws) *Ne quis ex domo ſua in Jus vocari vel pertrahi poſſit*, That no man ſhould be arreſted or forcibly taken out of his Houſe.

Quintilian lib. 5. ca. 6.

Ritterhuſius Commentar. ad 12. Tabul. cl. 1. Gothofredus ad Tabul. de in Jus vocando

And the Civil or *Ceſarean* Law, when according to the Cuſtom of ſome Countries, in Towns or Places of Trade, as in *Holland* and the *United Provinces*, Arreſts in Actions of Debt were at the firſt not much accuſtomed, where the Debtor hath a *Domicilium*

cilium or fixed Habitation, doth notwithstanding in the notion or interpretation of a *Suspectus de fuga*, warranting a present incarceration or Arrest of a Debtor, if he be not a Free-holder or Man of a very visible Estate, appear to be so willing at this day to gratifie and secure the fears and jealousies of Creditors, & avoid those Circulations, Inconveniences & Delayes, which would otherwise happen if they should tarry, as they do sometimes under that Law, to receive the debate before a Judge, whether the Debtor was a Free-holder, likely to run away, deserving to be arrested, or to have his Body to be secured, as it hath allowed no less then 20. Exceptions, against a Debtors not being to be exempted from it, *viz.* First, That he hath no Free-hold or ability to pay the Debt. 2. Is a Forreigner, *Incerti Laris*, or a Vagabond. 3. Hath made his Estate to be notoriously worse then it was formerly. 4. *Accepit Pecunias sub gravibus Usuris*, gave too great Interest or brocage to borrow Money. 5. Keeps ill Company. 6. Hath met with some great misfortune since his Debt contracted. 7. Is a great Liar,

Peregrinus Janninius Tract. de Citat. real. lib. 1. ca. 2. ab §. 141. ad 199. & lib. 2. ca. 1.

Liar and Deceiver, and suspected to be a Bankrupt. 8. Doth waste his Estate, and intendeth to defraud his Creditors. 9. Is a Gamester. 10. Hath all the signs of a suspitious Person. 11. Makes use of many Men to be bound or ingaged for him. 12. Engageth himself in many businesses. 13. Is looking out or providing for another Habitation. 14. Is turned Informer. 15. Keeps his Shop shut up. 16. Is a Man of ill life or conversation. 17. Or hath been so formerly. 18. Hath been an Offender in Criminal matters. 19. Lodgeth his Goods in some secret place. 20. And is packing up to be gone.

But they that can dream of Tyranny and Oppression in our Proces of Arrest and Outlawry, and know not how to prove it, will rather then miscarry in their design of *Metamorphosing* our Laws, and putting them into as many new fashions as the variety and vanity of their Cloaths and Habits, quit all those accusations must vanish and never be able to make them any good return, seek out some other way to alter or abrogate those kind of Law proceedings, and there-

25 E. 3. ca. 4

36 E. 3. ca. 1.

The Oath of a Freeman of London, and Acts of Parliament for confirmation of their Liberties.

Proces of Arrest as a lawful and beneficial Custom, and constrained all that were to enjoy the largely comprehensive Freedom of that City, to take an Oath to maintain the Franchises and Customs thereof, would have made it their business to get many an Act of Parliament to confirm them, if they had supposed it to have been prejudicial to them: And that the People of *England* should, in so many several Ages since those pretended Acts of repeal, not only have petitioned for several Acts of Parliament, for Proces of Arrest and Outlawry in several Actions, but through so many past Ages and Generations Arrest and imprison one another in the way to Justice, and not at all think themselves guilty of betraying their own Liberties, and never complain of it: Or that the Justice of the Nation should in all that long course of time be so sleepy or mistaken, as to continue and put in Execution an Act of Parliament repealed, and maintain and continue a grievance.

Or that our Ancestors, who were not all restrained by that Statute of 25 E. 3.

ca. 17.

ca. 27. from the former more usual course of proceedings in Actions of Debt, by Writs of *Summons*, *Pone*, and *Distringas* (for these were Writs of *Summons*, *Pone*, and *Distress* made use of in Debt and Accompt after the making of that Statute, where there was such a visibility of Estate, as the Sheriff could not safely return, that the Defendant had nothing whereby he might be summoned (in having been in *Easter* Term, in the 22 year of the Reign of King *Edward* the 1. declared, to be a constant rule in Law, *Quod nullus qui habet terras debet arrestari per Corpus, ad reddendum compotum set per terras cum habeat sufficientiam*, No Man that had Lands sufficient was to be arrested by his Body, in an Action of Accompt) as there may be at this day, if the Plaintiff have a mind unto it, and would rather proceede by a longer way about then a shorter.

In Archivis in albo Turri London, & in recept. Thesaurat. Scaccarii post 25 E. 3.

Pas 22. E. 1. London rot. 3.

And should of themselves have made an Election of the way of *Capias* Arrest or Outlawry, and continue it for above three hundred & fifty years without any thing like a complaint against it, if they could have believed

believed that that Act of Parliament of 25 E. 3. ca. 17. had been repealed, and a long and undeniable experience had not informed them, that it was a much better and expedite way of bringing Men to Justice, or that if the Writs of *Pone* and *Distress* had been the better way, the Statute made in the 7 H. 5. ca. 1. Seventh year of the Reign of King *Henry* the Fifth, which was sixty-nine years after, to give Proces of Arrest and Outlawry in Actions or Writs for *forging of Charters* or *Evidences*, would have esteemed it to be for the Common good of the People to have enacted it; or if after the making of that Statute, the course of *Capias*, Arrest, and Outlawry had not been believed to be the most beneficial, the Statute made in the 19 H. 7. ca. 6. 19th. year of the Reign of King *Henry* the Seventh, for giving of Proces of Arrest and Outlawry in *Actions of the Case*, which was made 84. years after, would have declared the way of *Pone* and *Distress* to have been *the Cause of great delays*, or that the Act of Parliament made in the 23th. year 23 H. 8. ca. 34. of the Reign of King *Henry* the Eighth, for giving Proces of *Capias* in Writs of *Annuity*, which

which was made twenty-eight years after the making of that Statute, would have said, *there were many delayes in Actions of Annuities, because no Writ of Capias did lie in that Action* (Acts of Parliament in those dayes, and long before & after, having by our Kings been granted upon the Petitions and Requests of their Subjects, and penned, advised or carefully perused by the Reverend Judges of the Land, and Counsel in Law of our Kings and Princes, before they were passed and ratified) and that so many of our Fore-fathers, who for so many years and Ages have in every year been arrested, or voluntarily put in Bail to appear and avoid it, should be so senseless as not to understand the said Act of Parliament of 23 E. 3. *cap.* 17. to have been repealed, if any such thing had been, or deem it to be a grievance to be compelled to appear in a Court of Justice, or that all the Plaintiffs in those kind of Actions should be so wicked, as to continue that course and kind of Proces. If they could have understood it to have been a grievance, the Dean and Chapter of *Lincoln* would not have

Trin. 21. Eliz. rot. 113. in Banco Regis.

have prescribed for a Liberty in their Court, to Arrest in all personal Actions; and the Lieutenant of the Tower of *London* the like; nor the Judges have allowed those prescriptions, and all Cities, Burroughs, and Corporations where they have connusance of Pleas, would not upon a *nihil habet* returned, (for that is so alwayes done of course in Cities and Corporations to warrant their Arrests) have claimed and exercised a power to Arrest as well Inhabitants as Forreigners coming thither; or that the Judges of the Admiralty, in Sea-faring and Maritime Causes would have permitted, as they have anciently done, Arrests to be made upon Debts, Contracts, Charter parties or the like, or have been allowed to do it, if it had deserved to have been called a grievance, or that it ought not to have been done by the aforesaid supposed Acts of Repeal.

Old Book of Entries tit. false Imprisonment fol. 320.

Welwade Sea-Laws 27. 63.

And that none of so many thousand, or more then ten hundred thousand Defendants should by Pleas, Demurrers, or otherwise signifie so much, or so many Advocates, and so many learned Judges, Serjeants, and

and Sages of the Law, which have been ſince the making of that Statute of 25 *E.* 3. for the giving of Proces of Outlawry in Actions of Debt, ſhould not of themſelves have found out or have ſought it from our Kings and their Parliaments ſome remedies, or would not have forborn the granting or acting by ſuch kind of Proceſs, if they had conceived that the Act of Parliament of 25 *E.* 3. *ca.* 17. had been repealed, or that ſuch kind of Proceſs had been a grievance.

And that more then *one hundred thirty and ſeven Parliaments*, which have been ſince the making of that Statute.

And ſo many Parliaments and Aſſemblies of Wiſe Men, before and at the making of that Statute, which met only to be wiſe, and find out fit helps and remedies for grievances, and things amiſs ſhould not foreſee it to be a grievance, or be ſo careleſs as not after to procure ſome Law or Act of Parliament, to give the People eaſe in it, or a fuller notice of the repeal thereof.

When in the Parliament of the 38*th.* year

38 E. 3. ca. 1. of the Reign of King *Edward* 3. the Commons did pray, that *the King would not grant Protections, whereby Men could not recover their Debts*; which was as they alledged, *A thing to the deſtruction of the People, and againſt Common right.*

Petitions Parl. 38 E. 3. Or that in ſo many Petitions in all thoſe ſo many Parliaments for the redreſs of Grievances, made and committed by Sheriffs, Under-Sheriffs, and their Bailiffs, and that *all Eſtates might enjoy their Liberties, if no Law be to the contrary ſaving to all Men their rights*, and the juſtly denyed Petitions againſt the *payment of Fines upon original Writs*, iſſuing out of the *Chancery*; nor in that of the Commons in Parliament, in the

Rot. Parl. 46 E. 3. 46*th.* year of the Reign of that King, that Writs of Treſpas in the Court of Common Pleas, although long before then uſed, might be made as well by that Court as by the Court of King Bench; for that the *Court of Kings Bench was removeable at the Kings pleaſure*; and that *the Great Charter, and the Charter of the Forreſt, and all other Statutes made by the King and his Progenitors, for the amendment of the Realm and tranquillity, and*

eaſe

eaſe of his People, might be kept and duly put in Execution in all points: Or in the Petitions of the Commons of the County of *Kent*, to that King in the Parliament, in the 50*th.* year of his Reign, againſt his Officers of the Caſtle of *Dover*, for arreſting by their *Catchpoles* out of their Juriſdiction; or in the before mentioned great Complaint of the Clergy, made in Parliament upon the death of *Robert de Hauley*, in the 2*d.* year of the Reign of King *Richard* the 2*d.* ſlain at the High Altar in the Church of *Weſtminſter* Abby, when he being arreſted and purſued by Bailiffs, had taken Sanctuary there, and the great debate thereupon before the King, or at the making of the Act of Parliament, in the Seventh year of the Reign of King *Henry* the Fourth, that impotent perſons outlawed might make their Attorneys, and the Acts of Parliament, made in the 10*th.* and 18*th.* years of the Reign of *Henry* the 6*th.* upon complaints, That *Men were outlawed, and could not know where to find either the Plaintiffs or their Attorneys*, and remedies ordained; Or in the Petition in the Parliament, in the 33*th.* year of the

Rot. Parl. 50. E. 3.

7 H. 4. ca. 13.

10 H. 6. & 18 H. 6. ca. 9.

Inter Petitiones Parl. 33 H. 6. n. 57.

Reign of King *Henry* the Sixth, againſt the multitude of Attorneys in the City of *Norwich*, and Counties of *Norfolk* and *Suffolk*, for *their inciting and ſtirring up the People to ſuites in Law*, there ſhould be no mention of that ſuppoſed grievance by the Writs of *Capias* and Proces of Outlawry, if it had then been thought or believed to have been one.

And that in the thirty times petitioning in ſeveral Parliaments of our Kings and Princes, for the Confirmation of *Magna Carta* (which as to that part of it, in the Chapter or Article twenty-nine, is the moſt excellent and the beſt of all our Laws. The People of *England* ſhould not underſtand the aforeſaid Act of Parliament, made in the 25*th.* year of the Reign of King *Edward* the 3. for giving Proces of Arreſt and exigent in Actions of Debts, and other Actions therein mentioned (if it could be interpreted, to be any violation of it) or that in all their Petitions for redreſs of grievances, and procuring of good Laws to be made, there appears nothing at all to have been alledged, That *by the Common*

Law

Law the Perſon of a Debtor was not arreſtable or that there is no poſitive Statute Law in force, for the continuing of the *Capias* and *Exigent*, againſt *Perſons in Debt and meerly Civil cauſes*, ſince the *fancied repeal of the ſaid Act of Parliament of* 25 *E.* 3. *ca.* 17. *by the ſaid Statute of* 28 *and* 42 *E.* 3.

But they who are ſo loath to part with their cauſeleſs affrights or are ſo unwilling to looſe the content of being the Founders of a change, or alteration in the Body politique, be it never ſo dangerous or of moſt certain evil conſequences, and are willing enough that their Fellow Subjects, of whom they pretend to take ſo much care, ſhould be at the trouble, hazard, and charge of the experiments, may do better to underſtand, or if they cannot, give leave to others to help them to underſtand.

That the purport intent, and true, proper and genuine ſignification of the words of our *Magna Carta ca.* 29*th.* was to ſecure the People, that the King might not take or impriſon any Man, *Niſi per legale judicium parium ſuorum vel per legem terræ*, which

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if extended to the People, in their affaires one with another, and made to be as obligatory and binding unto them, as it is and ought to be to the King, can have no other juſt interpretation then what Sir *Edward Coke* hath given us in his Comment thereupon (publiſhed after his death, in the later end of March 1641. or the beginning of the year 1642. Which is, ſaith he, as the Statute of 37 E. 3 ca. 18. expoundeth it by *due Proces of Law*; and what that kind of Proceſs was, hath been already determined and proved, to be as well by Writs and Proceſs of Arreſt, as by *Summons, Pone and Diſtreſs*, though the latter, as the condition and courſe of the affairs of the Nation then ſtood, was much more frequent and uſual, and it appeareth by that part of *Magna Carta* ca. 29. and the Exception therein, that there was a Proceſs or proceeding in Law, beſides the *Legale Judicium*, or Trial by Peers or Jury; and the Proceſs where Defendants were not willing to come to Judgement, and have their Controverſies determined (which but in very ſeldom Caſes never was or is likely to be other-

Cokes 2. part. Inſtitutes 50, & 51.

otherwiſe, there was and will ever be a neceſſity of compelling them by Proces to appear in Judgment, when they delayed or refuſed it: For as the great and learned *Grotius* hath ſaid upon another occaſion, The Liberties claimed from a Prince, ought to be ſuch as *competere poſſint ſubditis*, might accord with his Superiority and their duty of Subjects; for our ſo eager clamours of Liberty, cannot certainly be ſo nayled to any of their extravagant opinions and deſires, as to induce them to think it either to be lawful, rational or conſiſtent with the Great Charter, to deny the King or his ſubordinate Courts of Juſtice, a power to Impriſon any that ſhall be guilty of Contempt, againſt His Perſon or Authority, and to conſtrain them to appear in Judgment.

Poſthuma Grotii in Epiſtola quadam.

For the way which the Judges and Interpreters of our Laws have hitherto uſed in the Conſtruction and underſtanding of Parliaments (nothing appearing to the contrary) hath been an Inquiry into the occaſion and purport of them, commonly expreſſed in the preambles and reaſon thereof, and into the ſenſe as well as the words of them, for

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the preamble of an Act of Parliament, ſaith *Dyer*, ſometimes Lord Chief Juſtice of the Court of Common Pleas, is the Key to *open the minds of the Makers of the Act*, *and of the miſchiefs which they did intend to remedy*; and a Man ought not to dwell upon the letter, nor *to think that when he hath the letter on his part*, that *he hath the Law on his part*, ſay the Judges in the Reſolution of the Caſe between *Eaſton* and *Studde*, in regard that the rule in the expounding of Statutes, is to *ſearch out the mind of the Law-makers, what Conſtruction they would have made of it, if they were living*: And that Acts of Parliament ought to be underſtood, by a *reaſonable Conſtruction to be collected out of the words thereof, according to the true intention and meaning of the Makers* of the Act; that Statutes in the *affirmative* do not *regularly take away Statutes precedent in the affirmative*, *unleſs* in ſome ſpecial Caſes and Statutes referring to other Statutes, do not make any alteration in Law, but unto the points unto which they do Refer, nor doth a latter Act with Negative words, ſay our Laws, take away a former, if it be not contrary in matter:

Plowdens Comment. 363, 369, & 469.

Ibid. 46, & 467.

Cokes 5. Report. 2. part 5, & 6.

Cokes 3. Relat. Caſe del ſines.

And

And the Parliaments of this Nation have always taken care to use, expreſs and clear words of repealing any Statutes, which they intended to Repeal by plain and certain mention thereof, with the times wherein they were made & ſometimes repealed but a part of ſome former Acts by a new Act of Parliament, and enlarged and proceeded further then the former Acts did extend unto, as in the Act of Parliament, concerning Servants and Artificers wages, made in the fifth year of the Reign of Queen *Elizabeth*. 5 Eliz. ca. 4.

The words and meaning of the Statute 28 E. 3. ca. 3. being no more then, That *no man of what Eſtate or Condition that he be, ſhall be put out of Land or Tenement, nor taken, nor impriſoned, nor diſ-inherited, nor put to death without being brought to anſwer by due Proces of the Law.* 28 E. 3. ca. 3.

And in that of 42 E. 3. ca. 1. *It is aſſented and accorded, that the great Charter, and the Charter of the Foreſt be holden and kept in all points, and if any Statute be made to the contrary, that ſhall be holden for none.* And being a confirmation in general of all the 42 E 3. ca. 1.

thirty-seven Points, Articles, or Chapters of *Magna Carta*, granted in the Ninth year of the Reign of King *Henry* the Third (some of which did concern the King in his profits) did neither only intend that particular Chapter of *Magna Carta ca.* 29. to be made void or repealed, or declare that what was done, or to be done by lawful Judgment of Men by their Peers (which could not be without some kind of Proces or proceedings then in use) or that what was done or to be done by the Law of the Land, should be repealed as contrary thereunto; but did so not at all then intend to do it, or to affirm the due Proces of the Law to be contrary unto *Magna Carta*, either as to that twenty-nineth Chapter, or to any other, the Points, Articles, or Chapters of *Magna Carta*.

As that some of the People being at the time of the making of the said Act of Parliament of 42 E. 3. *ca.* 3. or not long before too busie in Arresting, Imprisoning and vexing one another by false Accusations, made to the King and his Councel that Chapter or Branch of 42 E. 3. *ca.* 3. was made

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for the redreſs thereof, and *for the good Government of the Commons*, as that Act doth import, having theſe words: *To eſchew the miſchiefs and damage done by falſe Accuſers, which oftentimes have made their Accuſations more for revenge and ſingular benefit, then for the profit of the King, or his People, of which accuſed Perſons ſome have been taken, and ſometimes cauſed to come before the Kings Counſel by Writ, and otherwiſe upon grievous pain againſt the Law:* It is aſſented and accorded, That *no Man be put to anſwer without preſentment before the Juſtices, or matter of Record, or by due Proces or Writ original, according to the old Law of the Land; and if any thing from henceforth be done to the contrary, it ſhall be void in the Law and holden for error.*

Both of which Statutes will be beſt expounded by Sir *Edward Coke*, who in his Expoſition and Comment upon *Magna Carta* ca. 29. and all the other parts thereof (for out of that moſt commendable Law thoſe two Acts of Parliament of 28 *E.* 3. *ca.* 3. and 42 *E.* 3. *ca.* 3. do ſeem to have been drawn, and are but as Confirmations

Coke Comment. ſuper Magna Chart.

of it) ſaith that by *the Law of the Land*, is to be underſtood, the *Common Law, Statute Law, and Cuſtomes of England*; which though they be in the Negative, have no reference or contrary matter unto that of 25 *E.* 3. *ca.* 17. and do not prohibit the former allowed, and due Proces of the Law, or declare them to be contrary to *Magna Carta*, or any Article or point thereof, nor have any expreſs words, or ſo much as any preamble, which may ſignifie any purpoſe that they had to repeal it; for all that is forbidden by thoſe two Statutes of ſuppoſed repeal, is to prevent the miſchiefs complained of by ſuggeſtions to the King and his Counſel, and *that no man be diſinherited, put to death, or out of his Land taken, impriſoned, or brought to anſwer, but by due Proces of the Law, according to the old Law of the Land.* And the Statute of 37 *E.* 3. *ca.* 18. giving an order of purſuing a Suggeſtion made unto the King, doth mention the great Charter, and the words therein contained, That *no Man be taken, nor impriſoned, nor put out of his Free-hold without Proces of the Law.* For if our Records

37 E. 3. ca. 18.

and

and Law-books, and the reason thereof, and all that hath been learned and believed hitherto do not fail us, those Statutes or either of them cannot be interpreted, to intend to take away any lawful and necessary Arrests, and Imprisonments in Actions of Trespas, which were in use long before the making of *Magna Carta*, or the arresting or restraining of the persons & liberties of Defendants, in Actions of Debt and the like; or for a Contempt of the King or his Courts of Justice, in not appearing when they were summoned or cited, or when they had no visible Estate to satisfie, or were likely to fly or run away, the true intent and meaning of those Statutes of 28 E. 3. and 42 E. 3. tending rather to confirm and establish that Act of 25 E. 3. da. 7. then to repeal or take it away, the main scope or purpose of them being only to restrain any arbitrary Government, or any lawless proceedings of the People one against the other; for it is impossible by any sense or reasonable Construction of those Statutes, to conclude any the least design in them, or either of them to take away

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or alter a Law or Custom of the Nation which was not then at all so much as complained of, when by forbidding to do that which was against the Law, they must of necessity be understood, to allow of that which was the Law or consistent with it.

For it hath been said and never denyed, to be a rule in our Common Law as well as in the Civil Law, that *Exceptio firmat regulam in Casibus non exceptis*, The exception or saving doth preserve and allow of that to be the Law which is excepted, otherwise if the exception should be (as certainly it is not) nugatory and serves for nothing, the meaning of our *Magna Carta* it self, and all those very many Statutes of Confirmation afterwards enacted, must be (as they can never be rightly taken to be) that be the matter or cause Civil or Criminal, Treason, Murder or Felony, no Man is at all to be disseised, or put out of his Lands, arrested, imprisoned, or compelled to answer, and the King, who is sworn to administer Justice to his Subjects, must by *Magna Carta* it self be denyed, and debarred the use of means to do it, and the People thereby

by put into a condition not to be able to obtain Justice one against another.

And if no Laws concerning Proces in Debt, or other personal Actions, which have been enacted or allowed by Acts of Parliament, subsequent to those before mentioned, and supposed repealing Acts of Parliament, made in the 28 and 42 *E.* 3. or derived by necessary deduction from reason (which ought to be the Soul and Constituting part of all Laws) shall not be allowed or taken for Laws, the Parliaments of *England* (wherein all manner of grievances, and many times very small and inconsiderable, were seldom omitted to be complained of or petitioned against) have by making of the Statute of 7 *H.* 5. for giving Proces of Arrest and *Capias* in Actions of forging of Charters of 9 *H.* 7. in Actions of the Case and 23 *H.* 8. in Actions of *Annuity* not only not remedied but enacted grievances, and all our other Laws which have been since made, concerning the taking or imprisoning of Mens Bodies, in Actions of Debt or other Civil and personal Actions, or been put in Execution have

been

been no other then abuſes, and tranſgreſſions of the Law, and all that ſo many learned, conſcientious and Reverend Judges of the Law, and ſworn to judge according to it, have ſince thoſe times done or permitted to be done, in purſuance of thoſe latter Laws, have been but as ſo many great miſtakings to the oppreſſion of the People.

And the Parliament of 3 *Car. primi*, whereof the very learned *Selden*, and that great Lawyer Sir *Edward Coke*, and many very worthy Men and Lovers of our *Engliſh* Laws and Liberties were Members (ſome of which had not long before made themſelves Priſoners to ſecure a pretended Liberty) would have been guilty of a great overſight and inadvertency, in not getting better Proviſions in the Act of Parliament, made upon that which was called the *Petition of Right*, wherein that aforeſaid part of *Magna Carta* ca. 29. and the Statutes of 37 *E.* 3. *ca.* 9. 17 *R.* 2. *ca.* 6. and the very Act of 28 *E.* 3. *ca.* 3. now ſo much inſiſted upon, are confirmed. And the Acts of Parliament of 37 *E.* 3. *ca.* 18. 38 *E* 3. *ca.* 9. 42 *E.* 3. *ca.* 3. and quoted in the margent of the ſaid

Act

Act, are declared to be good Laws and Statutes of the Realm; and it was ordained, That *no Offender, of what kind ſoever, be exempted from the proceedings to be uſed, and puniſhments to be inflicted by the Laws and Statutes of the Realm.*

All thoſe Acts of Parliament being then expounded and underſtood, to be only intended againſt the Impriſonment of Men, by the King or his Councel, without cauſe ſhewn; and the ſame Parliament did then procure diverſe Acts of Parliament to be repealed, but not that of 25 *E.* 3. *ca.* 17. which neither was repealed in that nor any other Parliament, in Terms or words intelligible, or by implication or otherwiſe, and did never yet deſerve to be ſo ſince the making thereof.

Nor would that Parliament, labouring ſo much for liberty, have at the ſame time allowed of that Act of Parliament of 25 *E.* 3. *ca.* 17. for the Proces of *Capias*, and Exigent or Outlawry in Actions of Debt, if it had been a grievance, or not underſtood as it ought, to be a legal and neceſſary part of the Laws of the Land, or have omitted

ſo often and daily happening Concernments of themſelves and their Poſterity, if they could have thought that way of Proces and proceedings at Law, either was or could have been a grievance, when as they did then ſo much believe all the grievances of the Nation, to be by that abundantly ſatisfactory Act of Parliament, made upon that *Petition of Right*, to be baniſhed and their fears quieted, as they cauſed publick rejoycings and Bon-fires to be made for it.

And if it had not been ſo underſtood, by the Reverend and Learned Judges, and Sages of the Law, who were then in being, and have been ſince entruſted with the Adminiſtration of Juſtice, ſuch Proces and proceedings would never certainly have been made when the *Petition of Right* prayed, That *in the things aforeſaid all his Majeſties Officers, ſhould ſerve him according to the Laws and Statutes of this Realm, as they would tender the honour of His Majeſty, and proſperity of the Kingdom*; and the King in his anſwer thereunto, and giving it the life and power of a Law, did will *that right ſhould be done according to the Laws and Cuſtomes of*

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the Realm, and that the Statutes be put in Execution, that His Subjects may have no cauſe to complain of any Wrong or Oppreſſion, contrary to their juſt Rights and Liberties.

Petition of Right in 3 Car. primi.

For it muſt be a more then an ordinary *Hypochondriacal* Melancholy, that can perſwade any Man to think, that if the Proceſs of Arreſt or Outlawry could by any foreſight or proſpect have been believed, to have been either a grievance, or illegal, or any Seminary of ill Conſequences, that ever to be lamented unhappy Parliament begun in *November* 1640. would in that fatal Remonſtrance of theirs, publiſhed to the People the 15*th.* day of *December* following, wherein they were ſo willing to amaſs every thing that might but look like a grievance of the People, and were ſo effaſcinated in their evil purpoſes, as they crowded in amongſt them many eſſentials and neceſſaries of Government, have omitted ſuch an important and often happening grievance (if any could with any colour of Law or reaſon have believed it; or that in the nineteen high and mighty Propoſitions ſent by them unto him in *June* 1642. or in the Meſſage or

Committe of the Lords and Commons then remaining at *Weſtminſter*, ſent unto him at *Oxford* in Anno 1643. by the Earl of *Northumberland*, *William Peirpont* Eſquire, and others; or in the Treaty and Propoſitions at *Uxbridge* for Peace, betwixt the King and that miſnamed Parliament in the year 1644. ſuch a neceſſary, if it had been thought to have been one, ſhould have been neglected; or in the Meſſage of the Lords and Commons, in the then ſo called Parliament, ſent unto him when he was a Priſoner at *Holmby* in the year 1647. with propoſitions for Peace, nothing ſhould have been deſired to prohibit Arreſts; but on the contrary an Act of Parliament was required, for confirmation of all Cuſtoms, Charters, Liberties, and Franchiſes of the City of *London*, which for many hundred of years before had been approved: Or that in the Bills and Propoſitions ſent unto Him in the ſame year to the Iſle of *Wight*, when he was there a cloſe Priſoner: Or in an Act or Ordinance, made by the Lord Major and Common Councel of *London* in the year 1660. for the better regulating of that Cities Courts

Vide Act of Common Councel.

at

at *Guild-hall*, in which notice was taken of their ancient Customs, and diverse abuses committed by *Serjeants at Mace* and their Yeomen, in arresting of Men, there should be no mention made of any original Grievances or Illegality by or in the Proces of Arrest, nor any orders made or desired to be made against it.

Until therefore this *invisible* and *unintelligible* repealing Act of the Statute of 25 *E.* 3. *cap.* 7. shall be pleased to appear and shew it self, the Founders of that fancy may do well to build no further upon it, but silence their causeless out-cries against it: And when such or the like imaginations shall offer themselves, think rather that Acts of Parliament (according to the advice and opinion of the Judges in Doctor *Foster's* case) *which have been established with so much solemnity, wisdom, gravity, and universal consent for the good of the West publick, ought not by any strained construction or ambiguous words* (if there had any been) in any subsequent Act *to be laid aside, disused, or abrogated*; and that doubtful æquivocal words (if there had been any) ought according

Cokes 11. Reports Doctor Fosters case.

Cokes 6. Reports.

cording to the rule in *Gregories* Case, to be interpreted in the better and more likely sence.

And not trouble themselves as they have lately done for before the year 1640 and 1641. (when *Liberty ran mad*, and the Factious part of the People did too much read the Books of *Plunder* and *Sequestration*, and admired the Models and Contrivances of *Hugh Peters*, *Hudson* the Cobler, *Pride* the Drayman, and every Mechanick and Tradesman, and every Mercenary *Red-coat* Rebel-Souldier, who would by his indigested conceptions be a *Solon* or *Licurgus*) they did not to subvert, as they endeavoured to do, our long experimented & approved Laws & Customs, to make room for their own ungodly advantages, and sordidly ignorant alterations, and at the same time allow the *Caption* and *Horning* of that by them Conquered and once Legally Covenanting *Scotland* to be lawful.

Not vex themselves and others, as they have done with the *Chymeras* and phancies of that never to be found repealed Statute of 25 *E.* 3. *cap.* 17. and their so much mistaken *Gorgons* head, and affrights of their Liberties being likely to

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be loſt by that or other our Laws, when our Laws and the due Execution thereof are and have been by our Kings and Princes, and their juſt authority the only means under God to preſerve them.

Or be ſo over-laviſh in ſhooting their *Bolts*, in undertaking to aſſert, That *England is impoveriſhed more then a Million of Money Sterling every year by Sheriffs, Bailiffs, Serjeants, Marſhals-men, Proces-makers, Habeas Corpus, Rules, Writers*, &c. (As a late Anonimous Champion of thoſe kind of *Liberty mongers* terms them) for which he would decoy as many inconſiderate People as he could, into an opinion and belief, that the *Creditor is not the better one Peny for it*; which is as impoſſible to be proved or believed, as that Bears are enabled by Nature to fly and uſually do it; or that the Mountains of Mountains the *Alpes*, thoſe higheſt Hills of the Chriſtian World, do uſually at every *Jubile* leap to *Rome*, to obtain an Indulgence or Pardon from that Holy Father, for being *ſo high-minded*.

And what ever far leſſer Sum of Money thoſe Officers Fees (which as to the Proceſs-

ceſs-makers are very ſmall and dearly enough earned) do amount unto yearly, it will be very difficult for that *Man of confidence*, whoſoever he be to prove that none or very many of the Creditors did not receive ſatisfaction of their Debts and charges, or more then a *Peny*, or were not the better for it (for the Defendant. where there is any ability to anſwer and pay them, do moſt commonly bear the burden of them) and that the Defendants Charges in a year do amount to a Million of Money Sterling, or any ſuch vaſt Sums of Money, as his monſtrous and incredibile gueſs, betwixt ſleeping and waking, hath calculated it, and will be as wide of any truth or probability as if he hadſaid, That he had in a Forreign Country ſeen two *Phœnixes* roſted, and brought to eat in a diſh, and had been in a colder Climat, where the extremity of cold was ſo great as the words ſpoken over night did freeze, and were legibly to be read in the Air the next Morning.

And thoſe *Sons of Rapine*, who are ſo given to change, and doe make it their buſineſs

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to hunt our Laws, like the *Ermyns* for the booty of their skins, may better employ their time in a ſad and ſerious repentance of that dirt, and many ſcandals which they have moſt injuriouſly flung upon them, & in throwing amongſt the People thoſe, though fooliſh, yet infectious tales and opinions, that *There are now ten thouſand Men in Priſon for Debt, and that the Proces of Outlawry have done more miſchief to the People of England*, then the Writs of *Capias* (which neither he nor any other can ever prove to have been primarily or cauſally and *per ſe* guilty of it) or then *the Bills of Middleſex or Writs of latitat*, which muſt either be done in his humour or natural of telling rampant or impoſſible tales, or on purpoſe to caſt thoſe legal Proceſs and proceedings, into an *Odium* or hatred, and will appear to be as much miſled by his ignorance, as he was before in his overhaſty Arithmeticque, when he adventures to ſay, that *a noble Man, by being outlawed, is made incapable to ſit in the houſe of Peers, a Clergy-man may forfeit his Benefice, or a Lawyer be made incapable of pleading at the Bar*, when our Laws do remem-

ber no ſuch matters; and a Noble man and Peer of Parliament cannot in any Civil action, or ordinary Treſpas by our Laws be outlawed; and although ſome other Perſons may by abuſe or error happen to be outlawed, when they ſhould not be outlawed, and by ſome evil accident never be able to find the Plaintiff or his Attorney, whereby to recover his damages, yet it is ſo ſeldom as it is very rare; and our Laws as they did never undertake to propheſie, or to have a preſcience or certain knowledge of things to come, ſo they never provided againſt *raro contingentia*, things ſeldom happening, or of little conſequence, neither can our or any other Laws be able at all times, to prevent all the tricks and evil actions, which the deceitfulneſs of mens hearts do too often put in practiſe. And that nameleſs Author may, upon his better acquaintance with our Laws, inform himſelf, and thoſe for whom he ſo much buſieth himſelf, that if an Outlawry ſhould, as he ſurmiſeth, be indirectly gained, the Court out of which it proceedeth do, when diſcovered, never fail ſeverely to puniſh ſuch an Offen-

Offender, and give what remedies they can unto thoſe that do ſuffer by it; and that there is a Statute, which was made in the Tenth year of the Reign of King *Henry* the Sixth, and renewed in the 18*th*. year of the ſaid Kings Reign, yet unrepealed to prevent and remedy it. 10. & 18 H. 6. ca. 9.

And is as much out of the way when he ſaith, That Tenures in Villenage were repealed by Act of Parliament, when in the Parliament of the fifth year of the Reign of King *Richard* the Second, the Manumiſſions of Villaines, which had been extorted from that Kingby *Wat Tiler* and his rout of Rebels, were declared to be void, and the wearing out of that Tenure, in the many Inteſtine Wars and Troubles of the Nation, and the favour and indulgence of our later Kings and Princes, and the Nobility and Gentry of this Kingdom, is to be aſcribed more thereunto, and a deſuetude & length of time, then unto any thing elſe, which hath ſo waſhed many a jolly Gentleman that would be, and Men of great Eſtates, whoſe Extractions and Originals (were at the firſt lodged in thoſe Tenures) in the Waters of Rot. Parl. 5 R. 2.

Lethe and Oblivion, as there are now very few or none to be found of them.

And is as little to be excuſed when he ſaith, That the Mortmaines of Abbies were taken away by Acts of Parliament, unleſs that he means by the total diſſolution of them, which hapned long after thoſe Mortmaines, and is as wide from the mark, in his impertinent Accompt of the Money or profits of the Biſhops Courts, as he is of any proof or certainty, that they are a burden, and can hardly inſtance any one Attorney (but certainly not many) that hath in one Writ of Priviledge, named or ſued one hundred Defendants, and held them to ſpecial Bail, whereas ſuch a vexation would have been remedied by an Appeal unto any Judge of the Court, out of which ſuch Writ iſſued, who had by the Law a power in his diſcretion, to order whether any ſpecial Bail ſhould be given, as the caſe required.

CHAP. XIV.

That the Nation hath not been baſe or ſlaviſh, ever ſince the making of the ſaid Act of Parliament of 25 E. 3. *ca.* 17.

AND is to prove, when he can, that many Men have languiſhed to death for fear of an impriſonment; for ſome one or few melancholick Perſons, may in their retirements, ſad apprehenſions or multiplied fears, have indangered their healths, which makes not the Juſtice or Laws of the Nation to be any more guilty or cauſe of it, or deſerve to be abrogated: Then the ſacred Scripture is to be blamed, for that ſome Perſons have by the reading of it, or hearing of it preached, been ſo diſturbed with an affright of conſcience, as they have been diſtracted, or laid violent hands upon themſelves.

Or that His late Majeſty of glorious Memory (if not miſ-informed by the conceal-ed Author of ſuch frivolous, feigned and falſe com-

complaints, or by ſome of his Proſelites) had ſo deep a ſenſe of his Subjects ſufferings, by ſuch Writs and Proceſs as he intended the inlargement of *P*riſoners for Debt, and the aboliſhing of all Arreſts and Outlawries for the future, by the then Parliament; if he could have received any recompence for the remitting of all forfeitures, and other profits ariſing to His Crown; nor doth give us any evidence for ſuch wild imaginations, nor ever will be able to do it; or that the Nation hath been baſe and ſlaviſh ſince the ſaid Act of Parliament of 25 *E.* 3. *ca.* 17. and other Acts of Parliament ſince made, which our Laws, Records, and Hiſtories; will abundantly confute, and our Neighbour Nations envying our Glory, Freedom, Peace and Plenty, may decry as an ingrateful and horrid falſity, deſerving to be had in everlaſting deteſtation.

Unto which bundle of untruths, and feaveriſh deliriums, are likewiſe to be added thoſe giddy Aſſertions; that the People are unſecure in their Eſtates, and that their good and welfare depends upon their being manumitted and enfranchiſed in their perſons, and

and made Noble and free by Aboliſhing of the Proceſs of Arreſt and Outlary. And that ſuch an Act of Grace will be accompted by all goodmen and their poſterities, a ſufficient recompence for all the Subjects paſt ſufferings, and be the greateſt mercy that ever any King of *England* extended to his Subjects, ſince they were a Nation.

Which ſhould it take effect, may be as little ſucceſsful to the pretended Advocat and his Party, and the Trade and Intereſt of the Kingdom; as the Eagles carrying in another Caſe, the burning Cole in the Apologue to her Neſt: And until they could have been ſure of a better, which they are never like to be, might have forborne their Snarling and Barking at our Laws, of which that Act of Parliament of 25. *E.* 3. *ca.* 17. Was accompted to be a part, which until the Diſtemper which ſeized upon a ſeditious part of the people, in the unhappy year of 1641. were, ſo well beloved and deſervedly commended, as *Thirning*, Chief Juſtice of the Court of Common Pleas, publickly declared in the 12*th.* year of the Reign of King *Henry* the 4*th.*

Coke in præfat' 8. Report.

4th, that the Laws of *England* were in the Reign of King *Edward* the 3d. *In the greatest perfection, that ever they were the Judges Sage, and learneds and the pleading, the greatest Honour and Ornament of the Law, were in that Kings Reigne of that excellency as thoſe of former times were but feeble unto them.* Sir *John Forteſcue* Knight, Lord Chief Juſtice of the Court of Kings Bench, in the Reign of King *Henry* the ſixth, by comparing of our Laws and Government, with the Laws and Government of *France* and other Nations, hath in his learned Book Written on that Subject, proved and demonſtrated that our Laws of *England*, *Do deſerve the Prehemminence over all other Laws, and do more ſecure the People in their Eſtates, Liberties, and Propertits* then thoſe of *France*, or any other Nation.

Forteſcue de laudibus legum Angliæ.

Queen *Elizabeth*, who made it her conſtant and uſual Charge to her Judges, to do Juſtice, and not to diſturbe or delay it. Governed her people by her Laws, in Plenty, Peace, and Proſperity, to the Worlds admiration, Terror of her Enemies, and the Comfort and Support of her

Friends

Friends and Allies; did ſo after her death Reign and live in her peoples hearts, as they in or about *London* have to this time, from the Coronation or beginning of her happy Reign, now above one hundred and ſixteen years ago, in a grateful acknowledgment of it, never omitted to Celebrate that day, with the Ringing of Bells, ſome legacies having been given in ſome places alſo, for the perpetuating thereof; King *James* had a great care of the expedition and execution of the Laws, in whoſe peaceable and plentiful Reign, ten years have paſſed without any Tax or Aſſeſſment of the people: And King *Charles* his Son, made a great part of his Coyn to wear the Inſcription, that he fought againſt a Rebellious part of his Subjects, to maintain the Laws, priviledges of Parliament, and liberties of the people, and dyed a Martyr, becauſe he would not betray, or deliver them up to a Lawleſs, unlimited, and ever to be dreaded Arbitrary power. Cokes 2. Relat in prefat.

So as that ſeducing Author, might have found a better imployment, then to throw

dirt at our Laws before he undetſtands them, and might have been able to have given a better accompt of his time, if he had followed the advice of Sir *Edward Coke*; Who was ſo much a welwiller to the Proces of Arreſt and Utlary, as whilſt he was Chief Juſtice of the Court of Comon Pleas, he did never diſlike or refuſe the putting his name and Teſte to ſuch kind of Writs, under the Kings Seal entruſted to his cuſtody; and being afterwards made Lord Chief Juſtice of the Court of Kings Bench, had ſo good an opinion of the Proceſs of Arreſt, and the neceſſity and uſefulneſs thereof, as that to maintain and ſupport the Writs of *Latitat* and Bills of *Midleſex* in Actions of Debt, and other perſonal Actions then too often made by that Court, which had no Juriſdiction or Conuſans thereof; but in Caſe of a Defendants preſent impriſonment, or of priviledge of ſome of their Members to hold Pleas in ſuch kind of actions, he feigned a preſcription to be made and uſed in the declarations thereupon, that the Defendant was in *Cuſtodia Marr' Mareſcalli Curiæ* and actually a Priſoner, when he neither was ſo at the time

time of the making of the ſaid Writs, or the time of the Defendants giving Bond for his appearance to the Sheriff, or at the time of the Plaintiffs declaring againſt him, as he did publiquely declare in Print, That every man ought, *next to his duty to God and his King, to yield a due reverence and obedience to the Common Laws of* England, *for that of all Laws humane they were moſt equal, moſt certain, of great antiquity, leaſt delay, moſt beneficial, and eaſie to be obſerved*; And *That he could defend them againſt any Man, that is not malicious without underſtanding, and make it manifeſt to any Man of judgment and indifferency, by proofs pregnant and demonſtrations, and by Records and teſtimonies luculent and irrefragable.*

Which juſt and due value and eſtimation of our Laws may well be credited, when if a Jury of the Subjects of our Neighbour Nations, Kings and Princes, or of the Republique of *Holland*, that *Corporation of Kings*, were impannelled and fitted with the knowledge, and underſtanding of the excellency of them, they could not either as to the impoſing or payment of Taxes, or to any

other particulars, refuſe to give a Verdict upon Oath, that our Laws and Cuſtomes do in their perfection, and right reaſon generally far excel thoſe by which they are governed, aud that the Subjects of *England* and *Wales* are by the happineſs of a well tempered Monarchy, and our Laws as ſecure from any danger of arbitrary power as any people under Heaven.

And he would find it to be a difficulty inſuperable to procure our Merchants of *England*, or any of thoſe who do undertake to inſure the hazardous adventures of thoſe that do go or ſend to Sea, and ſee the wonders of the deep and adventure their perſonal Eſtates upon the cholerick waves thereof, not ſeldom accompanied with humerous and raging winds, to give him an aſſurance and certainty, that the people ſhall not be ruined by that his goodly indigeſted project, which in its folly and inconveniencies, as to the credit, reputation and Juſtice of the Nation, exceeds that of *Jack Cade*, that great Maſter of Ignorance, who had perſwaded his Rable-rout to believe, that it would be an excellent piece of Reformation, and much

much for the good of the people, to ſuppreſs all learning and diſpatch all buſineſs and affaires by the help only of the *Score* and the *Tally*.

And will howſoever be as incertain of the ſucceſs, which none but mad Men, and ſuch as the *Turks* and Men of *Mecha* do uſually adore, can believe to be anſwerable to the end of publick good; as he may ſooner adventure to make an *Affidavit*, if any credit could be given unto it, of the poſſeſſion infallible of the imaginary *Elixir* or *Philoſophers Stone*, the only Eſſay of the gaining whereof, hath undone and emptied the Purſes and Eſtates of many more learned then ever he will be, then that the People of *England* have either lived in Slavery ſince the making of that Statute of 25 *E.* 3. *cap.* 17. or that there will ſuch an happineſs and mercy arrive or redound, as he pretends unto them, by the aboliſhing of the Proceſs of Arreſt and Outlawry, when ſeven parts of eight, the whole to be divided into no more, ſhall be ruined in their preſent Eſtate, and future hopes of a better for want of credit and truſt. And all the *Men of Money* lent out

and

and truſted, which are the ſmaller number, ſhall be in danger enough of looſing it; And the Free-holders of Lands, which comparatively, are far the ſmaller part of the Nation, ſhall be only the Men, and perhaps not half, or a quarter of them, that may be truſted or compelled to appear to any Actions of Debt, or for Money which ſhall be commenced or brought againſt them; And the Trade of the Nation which is now not ſo much outward as it either ſhould or ought to be, ſhall be very little ſtocked, or driven with ready Money for want of truſt, or ſuch a Proceſs as may with any certainty, or expedition compel the performance of it.

Or that His late or now Majeſty, when our Kings and Princes were wont in many of their Writs and Reſcripts, to acknowledge that they were *Debitores Juſtitiæ*, Debtors to their people in matters of Juſtice, *& Aſtricti*, bound and obliged unto it by their Coronation Oaths, could ever think it to be agreeable to their intereſts, or correſpondent to their Oaths, and other obligations to God and Man, to throw the Juſtice of the Land, with which they have been by God intruſted,

into

into a *Chaos* and confuſion, to gratifie the humors of a ſmall or inconſiderable number of his Subjects, the *quondam Rebells*, and moſt factious and ignorant part of them, and ruine the multitude, who are as much committed to their cares as the other, *Ne cum parti alicui placeant reliquas deſerant*, Leaſt when they ſeek to pleaſe a few, they do forſake and abandon thoſe who are much the *major part*, and greater number.

Howſoever let Sir *Edward Coke* ſay and write all that he can, in the never to be denyed juſt praiſes and commendations of our Laws, thoſe that without any cauſe or knowledge do too much maligne and hate them, adore a reſolved infatuation, and believe their Fort of Phanſies to be impregnable, and out of the danger of any Aſſaults, or being taken, will by their good wills, rather then forſake their deſigns, and the hopes they have of ſome new employments, oblige and tye him to his former miſtaken opinions, delivered in the aforeſaid Sir *William Herberts* Caſe, and likewiſe in his Comment. upon *Magna Carta ca.* 29. That the *Impriſonment of the body for Debt*, *unleſs in the*

the Kings Case, was not by the Common Law before the making of the Statute of 25 E. 3. *ca.* 17. although in all his Reports and Comments, and other his learned Writings, he hath not at all inveighed against the Process of Arrest and Outlawry in Actions of Debt, or other personal Actions, or declared or made any mention, that they were either illegal or a grievance: And when he said, *That Imprisonment of the body for Debt, unless in the Kings Case, was not before the making of the aforesaid Act of Parliament*, did no where say, that it was not before that time, upon Contempts of Courts of Justice, or the Writs or Mandates thereof, or upon a probability of a Defendants running away; and are the more pertinatious in it by Sir *Edward Coke's* being so much enamored on a Manuscript, called the *Mirror of Justice*, which as to the Copie, which he follows and cites in his aforesaid Comments upon *Magna-Carta*, and that so called *Mirror of Justice*, which was afterwards printed and published in the year one thousand six hundred forty-six, by *William Hughs* of *Grayes-Inn* Esquire, *Flagranti bello*, when the Laws and

Liber-

Liberties of the People werd by a wicked Rebellion, under a pretence of Reformation of Religion for ſome years before endeavoured, to have been deſtroyed, and ſaid to be tranſlated out of an old *French* Copy, which hath been juſtly ſuſpected, & in many important matters proved to be fictitious, & to Men of Learning, and thoſe that have traced the paths or fields of Learning and Manuſcripts, and obſerved the contrariety, omiſſions, additions, tranſcriptions, miſtakings, interpolations, annotations, impoſtures and words, therein creeping out of the margent into the Text; and thoſe many counterfeit Books and Manuſcripts, which even in the primitive times of the Church and after Ages, have been impoſed upon Poſterity, and too often are and may be ſeen, will adminiſter no matter of wonder.

They therefore who do ſo cheriſh and delight in the novelty of opinions, and are moſt pleaſed with thoſe which are likelieſt to anſwer their expectations of gain and profit, or may ſerve to engage the protection and favour of ſome hopeful and prevailing Partie and Faction, may do an Act of Juſtice to

themselves and others, to pause a while and look a little more into the aforesaid opinions of Sir *Edward Coke*, although he must be acknowledged to have been a very great Rabbi in our Laws, and consider well the Grounds, Authorities and Reasons upon which he hath founded them, before they do *Jurare in verba Magistri*, and espouse or build upon them.

CHAP. XV.

An Examination of the opinions of Sir Edward Coke, *in his Report of the said Sir* William Herbert's *Case, touching the Process of Arrest used in our Laws, and the many Errours appearing in the Book or Manuscript, called the* Mirror of Justice, *and the fictitious Statutes and relations mentioned therein.*

FOr although *in Criminalibus & Capitalibus* arrests, in Criminal and Capital causes, as Arrest or real Citation, as the Civil Lawyers call it, is and hath ever been used by the Laws of God, Nature and Nations.

There ſhall not be ſuch gentle Proceſs or Proceedings by way of Attachment as is uſual in other Caſes, but ſuch Malefactors are preſently to be arreſted, and the Goal or Priſon is to be their Surety, until they defend or clear themſelves: yet thoſe kind of neceſſary proceedings can have no other original or ground to ſupport or warrant them, but what proceeds from the before recited grounds or cauſes, or ſome of them: becauſe until the fact be tryed, it is but an accuſation, and not always ſo much as a probability, but a change or ſuſpition that it was done by him that is accuſed, and there will be always a *magis* and *minus*, and variatioe of Circumſtances in ſuch kind of Offences, which may either leſſen or heighten them; Nor do thoſe Rules which are given by *Bracton* for the reaſon of Arreſts or Reſtraints of liberty in perſonal Actions before judgment, that a *Habeas Corpus*, which amounteth in effect to a *Capias* or Reſtraine of the perſon or his liberty, is preſently to be granted *propter privilegium cruce ſignatorum & mercatorum*, in reſpect or favour of thoſe that were to go to the Holy War,

Bracton lib. 5. ca. 33.

War, or were Merchants; or *propter causam sive necessitatem*, for some urgent cause or necessity of dispatch; or in Trespas, *propter atrocitatem injuriæ*, the horridness or evil of the Offence; or *propter personam contra quem injuriatum est, ut si injuriatus sit Domino Regi vel Reginæ, vel eorum liberis, vel Fratribus, vel Sororibus, vel eorum Parentibus & Propinquis*, in respect of the Person against whom the wrong is done; as the King, Queen, their Children, Brothers, Sisters, or their Parents or Kindred, come up to the Rules of Justice for urgency of Affairs, necessities, or occasions, considerations, or respect of Persons, can of themselves be no cause of making Justice, which is not to be a respecter of Persons to be Eccentrick, or go a step out of her way, or to do any thing in one case, which should not or ought not to be done in other Cases, having the like ground of reason and justice, attended with the same circumstances, neither can *atrocitas facti vel injuriæ*, the grandeur and oughtiness of the offence, be the sole cause or ground of Arrest, in common or petty actions of Trespas, or for words, if there could properly

perly be any *atrocitas* or haynousneſs in them, or where it is done involuntarily; as in Caſes of Treſpaſs, or damage done by a mans Cattle, for Treſpaſs may be greater or leſſer; and if every Treſpaſs could be underſtood to be of the greater ſize or magnitude, and ſo horrid and enormous; yet there can be no reaſon to make the Caption or Arreſt to be in part of Corporal puniſhment, before the Judge or Magiſtrate be aſcertained of the guilt of the Party, or inſtructed how to keep the order which the Laws of God, Nature and Nations, and our *Magna Carta* have enjoyned; that is to ſay, to puniſh only *ſecundum quantitatem delicti*, according to the nature of the offence.

And that ſuppoſed ground or reaſon given by Sir *Edward Coke*, will be as deficient that the Common Law of *England*, abhorring all force as the capital Enemy to it, ſubjects the body to impriſonment until it hath made agreement with the Party, and fined to the King, bring any better reaſon with it.

For if the King ſhall (as he conceiveth) puniſh force by a *Capias* to Arreſt the body before the party be permitted to defend himſelf,

or a Tryal had by Jury, whether he be guilty or not, that would be more against *Magna Carta*, then any Proceſs of *Capias* or Arreſt in Debt can be dreamed or fancied to be, and a *Capias pro fine*, after a Tryal and finding guilty, will either ſhew that it was not the arreſting of the body in Treſpaſs, which was intended or inflicted for the puniſhment, but the *Capias pro fine*; and if both, the *Capias* in Treſpaſs before Judgement, and the *Capias pro fine* after Judgement, ſhould be inflicted for one and the ſame offence.

They would not be *ſecundum modum ſive quantitatem delicti*, proportionate to the offence, and the *Capias* to Arreſt would be before the King or in Courts of Juſtice, could be aſcertained that there was an offence.

Nor will that other cauſe or ground given by him in the Report of the ſaid Sir *William Herberts* Caſe, that the King may by the Common Law arreſt the body of the Debtor, for that *Theſaurus Regis eſt vinculum & bellorum nervus*, The Money and Treaſure of the King is the Bond of Peace, and Sinuwes of War obtain the concluſion which he aims

at;

at: For that were to make a King of supream Magistrate, which ought to be *Lex viva*, and Justice it self, to destroy that which he was sworn to protect, and give him licence to break Laws, who is not in ordinary Cases against the Rules of Justice, and right reason, to give such a liberty to himself or any others, or to do an act for an advantage or necessity, which the even and adequate Rules of Justice, common right, or right reason cannot allow.

So as by the favour of so great an authority in our Laws as Sir *Edward Coke* is, and with as much reverence as is or can be due to so great a lover of the Laws of *England*, and the veneration which he justly merits: I must of necessity, by what appears in the Cabinet and Treasury of time and Antiquity, and what is clearly to be perceived in those pure streams, which the Fountains of Justice and right reason have imparted unto Mankind, assert what I have done, and conclude that he was a man, and hath as the best Authors may in their Books sometimes do, which are not Scripture and Canonical, erred in averring that there was no Process of arre-

arresting the body of a Debtor, either before or after judgment, until the Statute of 25 *Edw.* 3. which gave Process of Outlawry in Actions of Debt.

When in allowing Process of Arrest in debt in the Kings Case, as he doth in Actions of Trespass, he must acknowledge the same reason and necessity, (which is a just and rational coertion to appear before the Tribunals of Justice, and of caution to be given to abide their judgments, to be in Actions of Debt, and other personal Actions.

And he himself in many of his Books and Writings hath as well as the Civil Law, and our Common Law, and the Law of Nations affirmed, that the same Reason may claim the like Law; For the reason that *Joseph* would have imprisoned his Brethren, upon a suspition that they were come to espie the Land, and kept *Simeon* a Prisoner until their words (and denials) were proved, gives us the reason, necessity, and justice of arresting in personal Actions and Debt, as well as Trespass, until cause or caution be given of appearing in Courts of Justice, and performing the judgments.

Genesis 42. v. 16, & 36.

And

And that learned Judge could, if he were now living, very well remember, that he hath often ſaid as well as found, that many of our Acts of Parliament are but declaratory of the Common Law, and that which was long before uſed, and underſtood to be as it was reaſonable.

That the matter or thing excepted in an Act of Parliament, is not included in any purview or proviſion of it, but is out of the reach and gun-ſhot thereof; and that when in the Statute of *Magna Carta* made in 9 H. 3. ca. 29. it is ſaid, That *no Freeman ſhall be taken and impriſoned, or be diſſeiſed of his Freehold or Liberties, or free Cuſtames, or be outlawed or exiled, or otherwiſe deſtroyed, but by lawful judgment of his Peers, or by the Law of the Land.* And by 25 *Ed.* 3. *ca.* 4. *That no Man ſhall be taken by Petition or ſuggeſtion, but by Indictment or Preſentment, or by Proceſs made by Writ original at the Common Law.*

He is in his Comment upon *Magna Carta*, and that Statute of 9 H. 3. of opinion, that the words *Per legem terræ*, do refer to all the precedent matters in that Chapter or Statute, Sir Edward Coke in Mag. Chart. 50, 51, 53.

that that Statute was but declaratory of the old Law of England; *That a Commitment by Lawfull warrant either indeed or in Law is accounted in Law a due proceſs or proceeding of Law, and by the Law of the Land as well as by force of the Kings writ: and that if a man be ſuſpected, and he flyeth or hideth himſelf, it is a good cauſe to arreſt him, that in many caſes a man may be by the Law of the Land taken and impriſoned by force of the Kings writ upon a ſuggeſtion made; and that againſt thoſe that attempt to ſubvert and enervate the Kings Laws there lyeth a writ to the Sheriffe in nature of a Commiſſion ad capiendum impugnatores juris Regis, & ad ducendum eos ad Gaolam de Newgate*, to arreſt the Impugners of the Kings Laws, and to bring them to the Gaole of Newgate; and if he had not been of that opinion; the words of *Magna Charta* in that Statute of 9. H. 3. can if they were put upon the rack and tortured, bear no other genuine ſenſe or interpretation then that *no man ſhall be taken or impriſoned but by lawfull judgment of his Peers, or by the law of the land*. And thoſe words of the Statute of 25 Ed. 3. ca. 4. that *no man*

Regiſter 64. Rot. pat 21. E. 3 part 1.

ſhall be taken by petition or ſuggeſtion, but by indictment or preſentment, or by proceſs made by writ original at the Common Law can receive no other conſtruction, but that a man may be taken by proceſs made by writ original at the Common Law, of which nature are the proceſs or writs of *Capias* in the Court of Common Pleas at *Weſtminſter*, which are made upon original writs iſſuing out of the Chancery, have been in u'e upon occaſion, and are matters of record before the Juſtices in this Kingdom, long before the making of thoſe Statutes. And ſuch an univerſal approved Ancient long and continued *Praxis* founded and fixt upon the Laws of God, Nature and Nations, in order to the preſervation of *Faith* and *Juſtice*; thoſe grand Supporters of humane Societies, ſhould need no Advocate to plead and juſtifie the neceſſary uſe thereof, but be ſufficient to perſwade the opponents to acquieſce in the reaſon and legality of it.

And that great Lawyer Sir *Edward Coke*, might have had more lawrels to have encompaſſed and grown up by his urne, and had not ſo much Eclipſed that great reputation

which he had gained in his Studies, and Profeſſion of the Laws as he hath; if he had not without a due and ſerious examination ſo much taken upon truſt, Gateſſed, Magnified, and recommended to poſterity that Manuſcript, called the Mirror of Juſtice, and ſome other Manuſcripts ſo often by him appealed unto, and vouched in his 2. *part.* of the *Inſtitutis*, or Comment upon *Magna Chartá*: In which Conſarcination called the *Mirror of Juſtice*, that *Mirror of Juſtice*, *Maker* or *Deviſer* dreameth truly to have recited ſome exemplary Judgments, or direful puniſhments inflicted by King *Alured*, or *Alfred*, upon 44. Judges of his; times for ſuppoſed Errors and Miſdemeanors by them committed, And hanged them, who with great probability may be believed not yet to have been hanged by that King or any other, for that if any ſuch remarkable things or Examples of Juſtice, had ever been done by him, they could not in all likelihood have eſcaped our old Hiſtorians, *Symeon*, *Dunelmenſis*, *Ailredus Abbas Rievalenſis*, *John Brompton*, *William Malmesbury*, *Henry Huntington*, *Roger Hovedin*, *Henry Knighton*, *Matthew*

Matthew of *Weſtminſter*, *Ingulphus*, and all our other Ancient times, Remenbrances, nor would have been unrecorded by *Aſſer Menevenſis*, , who for the fame of his Learning being ſent for out of *Wales*, to come and live with him, was preferred by him and made a Biſhop, and reſiding in his Court, Wrote his life and recommended to Poſterity, his moſt memorable Actions, excellent Qualities and Endowments, but was ſo far from the Regiſtring of any ſuch Severeties, as on the contrary he doth make mention of the extraordinary clemency and lenity of that Virtuous Prince, who although he was a moſt diligent inquiſitor of any male adminiſtration of Juſtice by his Judges; yet ſaith *Aſſer Menevenſis*, *Leniter Advocatos aut per ſeipſum, aut per alios ſuos fideles quoſlibet Interrogabat quare Ita, vequiter, Judicaſſent utrum per ignorantiam aut propter aliam malevolentiam: id eſt utrum pro aliquorum amore vel Timore, aut aliquorum odio aut etiam pro alicujus pecuniæ cupiditate.* Gently calling them to him, he did by himſelf or others whom he might truſt demand of them: Wherefore they had given ſuch

Aſſer Menevenſis de Alfredi rebus geſtis 21.

Judg-

Judgments, whether ignorantly or for any ill will, or for love, fear, hatred, covetouſneſs, or love of Money, *Denique ſi illi Judices profiterentur propterea ſe talia Ita: Judicaſſe eo quod nihil rectius, de his rebus ſcire poterint tunc ille diſcrete, & moderanter, illorum imperitiam, & inſipientiam redarguens aiebat; Ita inquiens nimirum admiror veſtram hanc inſolentiam eo quod dei dono & meo, ſapientium gradus uſurpati ſapientiæ autem ſtudium & operam neglexiſtis.* But if thoſe Judges did confeſs that they had ſo Judged, or done becauſe they knew no better, then he did diſcreetly and moderately ſhew them their ignorance, and ſay unto them, truly I do very much wonder at your folly; for that by Gods guiſt and mine, you have taken upon you the degree of my wiſe men and Judges, but the ſtudy of the Laws you have neglected. *Qua propter aut terrenarum poteſtatum miniſteria quæ habetis illico, dimittetis aut ſapientiæ ſtudiis multo devotius docere & ſtudiatis impero*: Wherefore I command you either ſuddainly to leave your places, or give your minds more unto ſtudy. *Quibus auditis verbis perterriti veluti pro maxima*

maxima vindicta Correcti Comites & præpoſiti ad æquitatis diſcendæ ſtudium totis viribus ſe vertere nitebantur, ita ut mirum in modum illiterati ab infantia Comites pene omnes prepoſiti & miniſtri litteratoriæ arti ſtuderent malentes inſuetam diſciplinam quam laborioſe, diſcere quam poteſtatum miniſteria dimittere. Whereupon they *viz.* His Earles and ſubordinate Judges, being as much terrified as if they had been actually puniſhed, did wholly addict themſelves to the ſtudy of the Laws, ſo as to a wonder the Earles and Judges aforeſaid; many of whom from their youth were ignorant and illiterate, did by ſtudy endeavour to make themſelves more able, chooſing rather the hardſhip thereof then to be put out of their places.

And the names of thoſe Judges, which were ſaid to have been hanged, do if there were any ſuch very much favour of later times, or if any of them were Earles (for ſo moſt of the provincial Judges then uſed to be) ſhould if guilty, by the cuſtome of this and other Nations, unto which this of ours may in that and many other things be found not to have been altogether a ſtranger, not in all likeil-

hood

hood have been ſubjected to ſo vile and vulgar a puniſhment, and the offences for which thoſe imaginary Judges are by that Author ſaid to have been hanged, were ſuch of which there were then for ought appears no Laws, in being to make them guilty of the breach thereof.

For all the Laws of King *Ina*, which have come unto us who reigned here in the year of our Lord 712. and next preceeded King *Alfred*, and moſt of the Laws of King *Alfred* and the *Saxon* and *Daniſh* Laws of their ſeveral Kings, which reigned after him did ordain and inflict their puniſhments by pecuniary mulcts with relation to their *Capitis eſtimationes* valuation of their Qualities and Eſtates, and there were certain known and appointed Rates for the redemption of *Lahſhlite* or *Manbote* for Manſlaughter, or the death of a man, he which killed a Stranger forfeited 2. partes of *eſtimationis Capitis* to the King, and the 3. part to the Children or kindred of the party ſlain. Theft was puniſhed by the Laws of King *Alured*, who reigned in the year 871. *ratione* 60. *hidarum*, ſo as if the offender had been

LL. Inæ ca. 6

been the owner of 60. hides of Land he which ſtole any thing out of the Church was to pay the value of the thing, and to have his hand cut off and there was a *Capitis eſtimatio*, for a Nun taken by force out of a Nunnery, or Killing a woman great with Child, a man having for ſome Criminal offence forfeited his liberty, or being adjudged to be a Slave for Felony was not to be hanged untill the 2. offence, and it was in the accuſers option or choice to have him only beaten; of which book compiled out of many fragments, the Author doth not ſeem; to be well pleaſed with our *Magna Charta*, and appears to be a great fault finder and complainer of the abuſes of too many things in the Laws of the time wherein he lived, and doth not well agree with himſelf in ſome of his own poſitions: as where he ſaith it was forbidden that *none ſhould be diſtrained by their moveable Goods, but by their Bodies or Fees.* In another place concludeth that the *Impriſonment of the Body of a man is an offence if not for tortious Judgments.* That no man is impriſonable for Debt, and none to be utlawed if not for mortal Felony and mentioned

LL. Alured cap. 6. 83.

LL. Inæ. ca. 23.

Mirrour of Juſtice cap. 1. §. 3. and cap. 5. §. 5. and Articles upon the Statute of Weſtmin. 2.

Mirrour of Juſtice ca. 5. §. 2.

mentioneth the uſe of Juſtices in *Eire* when Sir. *Henry Spelman* ſaith, the Juſtices Itinerant, or in *Eire*, were not here inſtituted untill the reign of our King *Henry* the 2.

Spelmans gloſſar' in verbo Juſticia & Eire.

And might have remembred if he had been ſo conversant, as he pretended with King *Alfreds* Laws, that Impriſonment of the body in Civil actions was not unuſual in the time of his reign; For that by one of his Laws, if a man had given a pledge upon oath and promiſed (which was not then infrequent) *quod juſte & legitime præſtare potuiſſet neque preſtiterit arma fortunaſque, ſuas omnia amicorum fidei concredito ipſe in cuſtodiam Regiam per 40. dies mittitor ſubiturus ſupplicii quod ei Epiſcopus pro meritis impoſuerit ſin ſpatio haud plene confecto fugam agitarit fugientemque ante verterunt per 40 dies in Carcerem ut quidem antea fieri oportuit conjicitor verum ſi fuga elapſus fuerit ab omni legis patrocinio deſtitutus habetor: atque in omnibus Chriſti Eccleſiis Anathema eſto. Quod ſi quiſquam alius pro ſe fidem dederit penas fide juſſonis violatæ dato & imperatum ſubito.* That which he might juſtly, perform, and did neglect, and not do it, his armes and all

LL. Alured cap. 1.

all his Eſtate and Fortunes ſhould be ſequeſtred into the hands of his friends, and himſelf impriſoned in the Kings Priſon, by the ſpace of 40. dayes, there to undergo ſuch puniſhment as the Biſhop according to his deſert ſhall impoſe upon him, but if before that time elapſed, he ſhall eſcape and be taken again, let him be impriſoned for 40. dayes as he ſhould before, And if he ſhall again eſcape, then let him be out of the protection of the Law, and excommunicate, but if any have been his ſurety let him pay the forfeiture.

CHAP. XVI.

That the late inceſſant needleſs complaints againſt our Laws, and the proceedings in our Courts of Juſtice, had in the bottom of it a deſign of overturning Monarchy and Government, and to create offices places and employments, and profits to, the contrivers thereof, and their Party.

BUt there muſt be ſomthing elſe that hath made all this ſtirre and inquietude, in the minds of thoſe Cauſeleſs kind of Murmurers, and hath ſo far tranſported themſelves out of themſelves, as to forſake the reaſon of mankind; for otherwiſe it cannot eaſily get admittance into any mans apprehenſion and belief: That Land-Souldiers, Seamen, Mariners, Merchants, Mechanicks and, ſome Tradeſmen for of ſome of every of thoſe ſorts were too many, of our late Church and State, and *Law reformers* compoſed, ſhould if they would

no

not be at leaſure to conſider that publique utility and neceeſſity, do in many Caſes both by the Laws of God Nature and Nations, ſometimes Curbe reſtrain leſſen or take away the free uſe of properties, ſo patiently and willingly without any mutining endure the rigorous penalties, forfeitures and ſeverities of the Laws of War and Navigation, and the arbitrary exactions and impoſitions of their Companies, and Governours of Trade; And not at all reare the cry of Oppreſſion and Invaſion of their Liberties, and yet ſo kick and wince at the legal and far more eaſie Rules of Juſtice, and may therefore require ſome ſearch to be made for the fountain and riſe of that popular Frenzy and diſtemper, and that ſo much miſtaken late outcry againſt the Writts, and Proceſs of Arreſt, and Outlawry, when the arguments which are framed and brought by that vulgar and leveling race of people, do abundantly declare that they have not much troubled themſelves with the reading and true underſtanding of thoſe Laws, which they do ſo labour to ſcandelize, and the Records

of

of the nation who do bear witneſs of them.

In the Inqueſt whereof the late pious Martyr King *Charles*, hath pointed out the way unto a more full diſcovery of their deſignes, when he did foreſee it, as in a Declaration publiſhed for the better ſatisfaction of his people, in *December* 1641. After that the houſe of Commons had made their aforeſaid unhappy Remonſtrance, he did not omit to give them to underſtand that he feared that *a malignant party in that houſe did go about by diſcountenancing the preſent Laws, to looſen the bonds of government; to the end, that all diſorder and confuſion might breake in upon him.*

Exact Collection of the Kings Speeches & Declarations.

And in his anſwer to the above mentioned 19. propoſitions ſent unto him by both houſes of Parliament the 2. of *June* 1642. Declared unto them *that thoſe that had the conduct of that affair, thought fit to remove a troubleſome rub out of their way*, viz. *(the Law) to the end they might undermine the very foundation of it.*

Ibidem.

Which every day after grew more and more viſible, when they being called together

gether to council and adviſe him, could not by their Votes, which they would make as binding and obligatory, as if they were Laws made and eſtabliſhed by their Soveraign, wreſt and take from him the *Militia*, or Sword wherewith he ſhould protect and defend his people; took it to be not a little advantagious to their purpoſes, to ravel and diſlocate the method and proceedings of his Laws and Juſtice; *By which his Throne was eſtabliſhed*, that by overturning the long approved Laws and Cuſtoms of the Kingdom, upon which the beſt Monarchy in the World was built, they might open a paſſage to let in that gain and *Anarchy* which they aimed at, which being once made known to their Emiſſaries, and ſo much encouragement given by their members of that which was then untruly called a Parliament, who rather then fail of Petitions unto them from the ſons of *Zerviah* and *Shimei* out of every Countrey, City, Corporation, and Market Town, cauſed Printed Bills to be affixed upon the Poſts and Corners of the Streets in *London*, whoſe multitudes of Inhabitants

in

in Masters, Apprentizes, Tapsters, and other Illiterate and Vulgar kind of people could readily afford them good store of such, as had been borne or lived in every County, City, and Corporation of *England* and *Wales*, to give a meeting at a place appointed to some Members of Parliament, for the framing of Petitions unto it; And thus the Hounds being uncoupled and let loose to chase the Royal Hart, and the Presbyterian Ministers like Huntsmen busied in the ha loo, lo ho, ha loo loo, so ho. Whooping and following to cheer and set them on, and busying themselves to remove all things that might hinder the pursuit of their Petitions, for the presenting whereof Pulpit Granado men were employed to procure them to be brought with 100 or 200 or more of the factious on Horseback, with the Petitions ready printed, or Tackt to their Hats or Hatbands, with Swords by their sides: The *London* Porters were set on to Petition against the Militia, when they were only told it was against the Watermen for carrying Trunks and other Burdens by Water. And a Schoolmaster at *Stamford*, was so

ſo wickedly Ingenious as to make his Boyes ſubſcribe a Petition to that Parliament againſt Epiſcopacy. as if their Parents had actually done it.

In the mean time, the Diurnals, News Books, and ſeditious Pamphlets the Stationers: Arrowes and Artillery were day by day ſhot to wound him, and incenſe the people againſt him; and ſome of the Parliament men were heard to ſay, *That they could not do their work without them*; And the deſign was carried on ſo proſperouſly, as too many thought their time beſt of all beſtowed, to pull down or take in pieces either all our old Laws, or ſuch a part of them, as might not only undermine the frame and conſtitution of the *Monarchy*, but innovate and introduce ſo much of their own Models and Inventions, as might either directly lead to a republique, or ſome new devices of *Anarchy*.

A Book called the pollution of Univerſity Learning, printed in 1642. Marched in the van, together with another Book called the *Obſervator* and his Jeſuitical principles, *Quod efficit tale eſt magis tale*, and that

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the King was *singulis Major*, but *universis Minor*, and those kind of Engines, were greatly incouraged in their attempts by a Book; of *Junius Brutus*, his *vindiciæ contra Tiranos*, translated out of *Latine* into *English*, to infect the people with Treasonable Doctrines. And a Book intituled *Maxims Unfolded*, That the Election of the Kings of *England*; *ought to be by the consent of the people. The Royal and politique power in all Causes, and over all persons, is properly the Parliament. The Oath of Supremacy, binds not in Conscience to the King against the Parliament, but the Pope*: And another book written by Mr. *William Prynn, an utter Barrister of* Lincolnes *Inne*; Entituled the *Soveraigne power of Parliaments and Kingdoms*, Printed at *London* in the year 1643. Wherein with heaped quotations, and much Learning, and reading the wrong way, he was willing to invite his Readers to believe that the *Court of Parliament had a lawful power to question the Kings Patents, Charters, Commissions, Proclamations, Grants, Warrants, Writts, and Commandments, whether they be legal, and*

Prynns soveraigne power of Paliarments.

to Cancell and repeale them that be illegal or miſchievous and onerous to the ſubject, not only without but againſt his conſent. It is lawful for the people ſubmitting themſelves to preſcribe the King and his ſucceſſors, what Laws they pleaſe; the Sheriffs of every County were antiently elected by the Freeholders, and had power to raiſe the Militia, that the Navy, Ammunition, Armes, and Revenue of the King, though they be in his poſſeſſion, are the Kingdoms; That Kings and their great Officers, Counſellors, and Juſtices, were at the firſt created and elected by the people, that the King hath no abſolute Negative voice in the paſſing of Bills of common right and Juſtice for the publique good, that the Parliaments preſent neceſſary defenſive war is juſt and lawfull, both in point of Law, Divinity and Conſcience, and no Treaſon or Rebellion: the Parliament hath a right and Juriſdiction to impoſe Taxes and Contributions upon the ſubjects, for defence of the King in caſe of the King his wilfull abſence, or Arming againſt them. Seconded by a Book entituled *Lex Rex*, written as believed by one *Rutherford* a Scottiſh Divine, Printed at *Lon-*

don by *John Field*, and published in the year 1644. By the then usurped authority, wherein he falsly endeavoured to maintaine against all the grounds and fundamentals of Law and Religion: *That Kings and their Families have no calling to the Crown; but only by the people, Royalty is not transmitted from Father to Son, if the people may limit the King, they give him the power, who is the servant of the people, both objectively and subjectively, and is inferiour unto them; who cannot make away their power, but do retain the fountain power of making a King, that to swear non self preservation, and to swear self Murther, is all one: The King is a Fiduciary Life-Renter, not a Lord or Heritor, the conscience of the people is immediately subordinate to God, not to the King mediatly or immediately, the Judges are the immediate Vicars of God, not of the King; The Parliament hath more power then the King, The Crown is the Patrimony of the Kingdom, not of him who is King or of his Father: The Parliament are not Judges by derivation from the King: Who cannot make or unmake Judges Inferior Judges, are more*

Rutherfords Lex Rex.

more neceſſary than a King: Parliaments may convene and Judge without a King: Are co-ordinate Judges with him, not adviſers only. Subordination of the King to the Parliament, and Co-ordination are both conſiſtent: The King tranſgreſſing in a haitous manner, is under the coaction of Law: Defenſive Wars are lawful: And there may be a diſtinction betwixt the Kings perſon and his Royal power, The Phyſical act of taking away the life of offending perſons, when commanded by the Law of ſelf-defence is no Murther. Wars raiſed by the Subjects and Eſtates for their own juſt defence, againſt the Kings bloody Emiſſaries are lawfull: Parliament power, is a fountain power above the King: Who is but a noble Vaſſal of the Kingdom: Is not head of the Church. The people in ſome Caſes may convene without the King: Subſidies are the Kingdoms due rather then the Kings.

And thus provided, and the ſcaling ladders made ready to ſtorm the Laws, which were the Forts and Bulwarks of the King and Government, and heretofore made it their buſineſs to give help or ſhelter to the King, the *Deformers* rather then *Reformers*, do haſten

one

one another to be up and doing. And therefore in a Pamphlet entituled *Liberty vindicated againſt Slavery*, Printed in the year 1645. the Author declared that *Impriſonment for Debts, is againſt the ſoundamental Laws of* England. Propoſitions were ſhortly after made unto that company of *Monarchy underminers*, called the Parliament for the laying aſide *the ſix Clarks in Chancery, and the imploying their under Clarks at Cheaper Rates.*

In the year 1646. Mr. *John Cooke* of *Grayes Inne*, who ſufficiently deſerved to be hanged, drawn, and quartered, as he was afterwards as a Traytor, in a Book dedicated to the moſt high and moſt honourable Court of Parliament, the ſupreme as he calls it Judicatory of the Kingdom, ſaith that the *alteration of fundamental Laws*, as Sir *Edward Coke* ſaith, *produces many inconveniencies, as in that ſtatute of impriſoning mens bodies for Debt.* And there muſt needs be good work in that their ſport of pulling down and ſetting up, when it hath been as truly ſaid as verified, that the Kings Parliament began in 1640. and continued

tinued with ſome freedom of Votes, untill *December* 1641. From thence it was governed by the City of *London* and their Tumults, Propoſitions, and Petitions, unto *December* 1643. And from thence by the *Scots* and their rebellious *League and Covenant*, unto the Month of *June* 1647. When the *Preſbyterians* had the aſcendant and predominancy, and that was not unjuſtly called the *Apprentiſes Parliament*; And after that Sir *Thomas Fairfax* his *Parliament*, which was governed by his Army, and their Addreſſes, Declarations, and Propoſals, wherein the Independant party were Superior, and ought to be called the *Agitators Parliament*.

The King in the mean time, in his great deſire of peace with thoſe whoſe wicked deſignes never intended it, not making that right uſe which he otherwiſe might have done, of the ſucceſſes which God had given him in the juſt defence of himſelf and his Loyal Subjects, and the Laws, Liberties, and Religion of his People, tired with the treachery of thoſe that too often betrayed, and ſold his juſt advantages, and over-

overpowered with an Army of Covenanting *Scots*, who came to assist their brother Rebells of *England*, and believing himself to be something safe in their Oaths and Promises, and flying to them for Succour, was by a party of them contrary to the Laws of God and Nations, sold to the *English* Rebells, for *two hundred thousand Pounds* Sterling, Too great a summe of Money to be restored again, as *Judas* did the thirty pence, the wages of his sin for the betraying of our Lord and Saviour, and by tricks and devices carried Prisoner from place to place, untill he was barbarously Murthered. And the Heire and Royal Issue driven out of their Inheritance, and then every Mechanick head was set on worke to frame a new Government, in which there were as many diversities of opinions, as there were Ignorances and Sinister ends, to advance their particular ambitions or advantages, and a mart being kept of *Whimsies*, some being much in love with the Balletting box used at *Venice*, others with the *Rota* and Mr. *Harringtons Oceana*, and all or too many thus

busied,

busied, Sedition and Ignorance sat in their Triumphal Chariots with the Laws, Learning and Religion of the Nation like so many Captive Kings in Chains attending, all which did not fully correspond with the Votes and expectations of the *Presbyterians*, when as *Cromwell* the great Encourager of the Independents or Fanatick party, then the more numerous, feeling his own strength and having a prospect of a better design of establishing himself, did so delay and trifle with the Parliament his Masters in their desires of disbanding the Armies, as the *Presbyterian* Souldiers in the mean time selling their *Debentures*, the wages of their Rebellion and wickedness, at 16 *d.* or 18 *d.* a pound, with a long Interest, to the Independents, who were thereby easily enabled to buy King, Queen and Princes, the Bishops, and Dean and Chapters, Nobility and Delinquents Lands, as they mis-called them; and that party being so well gratified, were not afterwards unwilling to Lacquey after his hypocrisie, and permit him to frame and make his own Instrument and method of a more arbitrary Government then our Laws

permitted, or any of our Kings or Princes exercised, and to be as a single person *Protector* of all the *Knaves* and *Fools* in *England*, *Scotland*, *Ireland* and *Wales*, withall their fancied and supposed Liberties, which as they used them were but to hunt and chase all that were loyal and honest, and thought they might do any thing to the *Amorites*, *Moab* and *Amalek*, and that all the Scripture was contained in Gain, being [as they supposed] Sanctified into a pretence and outward semblance of Godliness.

In the later end of the year 1648. some thousands of Well-affected, as their Sedition perswaded them, inhabiting the Cities of *London* and *Westminster*, Borough of *Southwark*, and Hamlets, supposing the Time to smile upon their purposes, did Petition that which when the King was murthered was no Parliament, that they would consider the many thousands that were ruined by perpetual imprisonment for Debt, and provide for their enlargement.

In the year 1649. one *Thomas Faldoe* of *Grays-Inne* Esq; was so loth to have his Conceipts and Opinions lag behind, as in a

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Pamphlet entituled, *Reformation of Proceedings at Law*, published on the behalf of himself and the Commonwealth of *England*, he complained, That *the Law of Property was depressed and useless, by the colour of the Statute of Imprisonment, and sacrificed to all the Birds of prey, even to Covetousness the mother of Cruelty, in the several Offices and Instruments of Justice.*

And in the same year came out a Representation of divers as they called themselves Well-affected persons in or about the City of *London*, petitioning the Parliament, That *all tenures in Capite, and all inferiour Jurisdictions, being great grievances and oppressions, might be taken away, the Laws translated into English, the Six Clerks, Head Registers, Masters of Chancery, and the Petty-bag, Affidavit Office, Prothonotaries, and all other grand Monopolies and Patentees, might be abolished, no mans life taken away for Felony, unless accompanied with Murther; that the eldest Sons in every Family might have a double Portion in the Fathers Estate, and the rest be divided amongst the younger Children; that no Fines be paid to any Cursitor, or upon any Original Writ,*

but may be quite abolished; that no mans person might be imprisoned for Debt, but his Estate made liable to satisfie the same: it being more suitable to the Turkish or Heathenish practice, then to Christian English Professors of the Gospel, to rack and grind the bodies of men in prison.

At the heels whereof was brought to that *Assembly at Westminster*, (who named themselves a *Parliament*, and to cherish such doings seldom failed by their Speaker to give thanks in the name of the House to all Petition and Declaration-drivers) a Petition of the Well-affected in the County of *Buckingham*, said to be a Representation of the middle sort of men within the three *Chilterne* Hundreds of *Disborough*, *Burnam* and *Stoke*, and part of *Alesbury* Hundred, declaring, *That they had waited eight years in the pursuance of their just Rights and Freedom, with which God had invested them and the whole Nation, kept from them by Arbitrary power and Tyrannical factors of the Nobility, Courtiers, Episcopal Priests, cheating Lawyers, Impropriators, Patentee men, Lords of Manors, and all illegal Courts, and other diabolical*

lical intereſſed parties, and deſire that all Licences, Commiſſions, &c. and Grants from the late King, whoſe firſt predeceſſor was that Outlandiſh Baſtard William the Conqueror, *from whence proceeded the original of all their ſlavery both in Tenures, Laws, Terms, Cuſtoms, &c. in an Outlandiſh tongue, the Lawyers being the chief Inſtruments of their miſery, might be aboliſhed; and proteſting againſt all arbitrary Laws, Terms, Lawyers, Impropriators, Lords of Manors, Priviledges, Cuſtoms, Tolls, Tithes, going to the Terms at* Weſtminſter, *payment of Heriots, Quit-Rents, Head-Silver, Lawyers Fees, and the whole* Norman *power, being a burden too intollerable to bear; did invite all men to enter upon Commons, and cut and fell the Wood growing thereon, and deſired* (which they would not be willing to do if they had been Lords of Manors, and other the parties ſtruck at) *to go by the golden rule of Equity,* viz. *to do as they would be done by, not to tyrannize over any, or to be tyrannized over.*

Another Pamphleteer feared he ſhould be taken to be ill affected to the babe of Sedition, if he alſo ſhould not be doing ſome-

ſomewhat, in a *Modeſt Plea* as he terms it, dedicated to the High Court of Parliament, which he would have to be the Supreme Authority of the Nations, prayed, *that there might be an equal Commonwealth againſt Monarchy*; wherein there is a Liſt againſt the *Univerſities*, *College Lands*, *Tenures*, *Hereditary Nobility*, *Church Revenues*, *Churches* and *Bells*, *Mercenary Lawyers* and *Tithes*, with an Apology for *Younger Brothers*, and deſires a reſtitution of the Tenures in *Gavelkind*.

In the ſame year, the Lord General *Fairfax*, Lieutenant General *Cromwell*, the Lord Mayor of *London*, Colonel *Harriſon*, Mr. *Francis Allin*, Colonel *Martin*, and others, were impowred to place and diſplace any Judges of the Courts at *Weſtminſter*, and *all Officers thereunto belonging*, *and all Sheriffs and Juſtices of Peace*.

Mr. *John Hare* being unwilling to ſtay behind ſuch Company, in a Pamphlet ſent out upon that deſign, deſired, that *the Norman yoke might be taken off*; and ſaith, that *the Norman Innovations are deſtructive to*

the

the honour, freedom, and other unquestionable Rights of the Nation.

In the same year, the Officers and Souldiers in the Regiments of Colonel *Scroope*, *Sanders* and *Walton*, and the Souldiers in the Garrisons of *Arundel*, *Rye* and *Chichester*, did petition the Lord General *Fairfax*, that *the abuses in the Courts of Justice be reformed, that there be a Registring of Deeds and Contracts, Tithes abolished, Six Clarks in Chancery taken away, and their Clarks sworn Attornies.*

Mr. *Sadler* a Lawyer, and a man in such favour with the Usurper, as he was by them made one of the Judges for the proving of Wills and Testaments, in his Book entituled, *The Rights of the Kingdom, and Customs of our Ancestors*, saith, *that the Writs of Capias as now used were very mischievous, did not lye at the Common Law in Actions of Debt*; cites Sir *Edward Cokes* opinion in Sir *William Herberts* Case, and declared, *that in Debt the Mirrour of Justice did pronounce the Outlawry to be a great abuse.*

In the year 1650. *S. D.* then an Attorney, (but since his Majesties happy Restauration

tion and the altering of the Scene, Knighted and put into ſeveral places of Honour and Truſt,) having convened and gathered together ſome Tides-men, and ſmall underſtanding Clarks and Attorneys, that were well inclined to ſet their Watches by *Cromwells* new *Court-Dial*, did in order to the Regulation of the Law, propound a *Law to be made againſt Fines to be paid upon Original Writs, for that* (the beſt reaſon that they could give againſt it) *it was againſt the reaſon of the Fundamental Laws of* England, *which never impoſeth any Fines but againſt offenders*; and the like *againſt Dilaries*, which were *unneceſſary*, and *did tend only to Charges and delay*; and that a *ſecond Summons being ſerved upon a Defendant and left at his houſe, and by the Sheriff or his Officer returned upon Record, the firſt Summons being made ſeven days before the day of Apparance, in which time the Plaintiff may enter his Declaration in Court, and if no Apparance entred within eight days after, then a new Summons in the nature of a* Scire facias *to be awarded upon the Imparlance roll, to ſummon him to appear at a certain day to come, when not appearing and pleading within*

within eight days after Judgment ſhall be given by default.

Mr. *John Jones* of *Nayoth* in the County of *Brecon*, in a Book printed and publiſhed in the ſame year, entituled, *Judges Judged* out of their own mouths, or the Queſtion reſolved by *Magna Charta* who have been *Englands Enemies*, *King-ſeducers*, *and the Peoples deſtroyers*, from King *Henry* the 3d. to King *Henry* the 8th. and before and ſince, ſtated by Sir *Edward Coke* late Lord Chief Juſtice of the Court of Kings-Bench, wherein that mighty *Cambro-Britain* in his own opinion doth with as little Law as Reaſon *charge the Judges and Profeſſors of the Law, with the deſtruction of honeſt men whom it ſhould ſave, and the ſaving of all thoſe whom it ſhould deſtroy or puniſh for unlawful reſpects and conſiderations, tending to their own profits and ends: And that by Prerogative Statutes deviſed by mercenary Lawyers to ſteal from the people their Birth-right, contrary to* Magna Charta, *and the Common Law of* England, *they are become an intollerable miſchief to the Commonwealth, and do deſerve exemplary puniſhments*; and cites the ſaid

Sir *Edward Coke's* opinion in his Comment upon *Magna Charta*, cap. 29. that *the Custom of* England *declared by* Magna Charta *doth not extend to the imprisonment of any Debtors but the Kings*.

And assisted those his wicked and false *Rakshakeswes* with another little Book, talled the *Cry of Blood*, dedicated to *Oliver Cromwell*, General as he stiled him of the puissant Army of the Parliament of *England*, wherein charging the crime of Murder, and of the bloud of the righteous *Abel*, as he is almost franticly pleased to fancy it, upon the Process of Arrest and Outlawry, and that innocent and most necessary way of compelling men to Justice, he stileth them a *course of Sin*, and the Offices of those who do make them the *gift of the Devil*, and *the Lawyers liars*; although Mr. *John Cooke* of *Grays-Inne*, before the *Devil* had entred into him and ingaged him to be a prosecuton of his Soveraign, even to the Murder of him, did in his Book printed in the year 1646. entituled, *A Vindication of the Professors and Profession of the Law*, dedicated to the then Parliament, declare,

that

that he was confident that *the Common Lawyers of* England *are as understanding rational men, as any Practisers of any Profession whatsoever in the world*; and he durst say, that *there are more Godly religious Lawyers, Attorneys and Sollicitors in* England, *then in all that habitable part of the world called Christendom.*

Mr. *William Leach* of the *Middle-Temple* proposed, that *no Defendant should be enforced to appear unto any Action, before a Penal Summons, and a Declaration first filed, unless in case of likelihood to depart the Land, or to make away his Goods*; and in such case, *upon an affidavit to be made before a Justice of Peace by any Officer to be arrested.*

Isaac Pennington the younger, the Son of that man of Faction his Father, offered in a Pamphlet to assert, that *the Rights, Liberties and safety of the people were in themselves, and derivatively in the Parliament their Substitutes and Representatives, and that the people ought well to look to their rectifying right, that it may have its free current.*

Mr. *Henry Robinson* in his publick Pro-

poſals for a cheap and eaſie diſtribution of Juſtice, *would have a publick Country Regiſtry for Lands, and another for Debts, and that in every City, Corporation and Diviſion in each County, Judges may be appointed with an yearly Salary.*

By a Petition of many calling themſelves a Free-people, promoted by *John Wildman* and *John Lilburne* Gent, they do require that all the Laws, Proceſs and Inrolments of *England* be written in *Engliſh*, and a *Roman* or Secretary hand.

Hugh Peters, a Prompter at a Play-houſe long before he was a mymick Preacher and the abuſe of the Pulpit, having made many a Renegado Voyage from *England* to *Holland*, thence to *New-England*, and from thence in the company of other *Birds of Prey* pearching here again in *England*, was ſo unwilling not to be as buſie in the ruine of his Country, as other men of the Trinkets and new Fangles were, as in his Book entituled, *Endeavours* (as he ſaith) *aiming at the Glory of God, that Peace and Truth may meet together*, undertaketh to prove, that Government by ſucceſſion from Father to

Son

Son was none of Gods inſtitution in the firſt and pureſt Times, that Cuſtom hath worn out Truth, but we were to enquire for the old and good ways, and *Chriſt* ſaith it was not ſo in the beginning.

And in *June* 1651. in his Book entituled, *Good Work for a Good Magiſtrate*, would have *Regiſters to be ſetled in every Pariſh of all Mortgages, Alienations*, &c. *and from thence tranſmitted to the County or Shire-Town; that in every County every Hundred do chooſe three men to be Peace-makers for a year, to determine all common controverſies without Appeal; Wills and Teſtaments to be acknowledged before two next Juſtices, and entred in the Parochial Regiſtries; five or ſeven in every Town or Hundred to be yearly choſen to determine all Debts or Strifes, whereof three to give ſentence without Appeal; that Summons inſtead of Arreſts may be left at mens houſes, none to diſtrain for Taxes or Debts, but the Debtors outward doors to be taken away and carried to the Town-houſe, and as many other new doors as ſhall be ſet in the place; every man plead his own cauſe, and if he think himſelf too weak, let him have*

Heugh Peters Good Work for a Good Magiſtrate.

have liberty to take a Friend or Neighbour to plead for him, but no Advocates or Scriveners to plead for any man; if any Lawyers be continued, let them be allowed and paid by the State; all Suits in London *and great Cities to be determined in a week. Which being done, it was very advisable to burn all the old Records, even those in the* Tower, *the monuments of Tyranny.*

And had so in a short time after hated on his design of destroying all the Records and memorials of the Laws of *England*, to make way for his new contrivances, as a Serjeant at Arms of the then miscalled Parliament, or one of their *Mock-Majesty Mace-bearers*, had an express order (happily diverted by some other affair when it was ready to be put in execution) to throw all the Records remaining in the *Treasuries at Westminster* into the River of *Thames*.

And the Law that it might the better be baited and abused, (as if no Foreigners could ever have occasion to read, understand, or make use of them) must with its Writs, Record, Process and Proceedings,

for

for the time to come be written in *English*, many of the Law-books being in order thereunto, by the factious and greedy avarice of many of the Book-sellers and Stationers, procured to be mercenarily translated into *English*, and exposed to the rude eyes and hands of the ignorant, and the little reason that the Owners of it do use to have, whereby to make it a ludibrium, and the wonder of their lesser Intellect, which might easily happen where they wanted the keys and assistance of other Learnings; and every thing their shallow apprehensions could not reach or fathom, was by them supposed to be *Norman* slavery, *Antichristian*, or Idolatry; the Records must no more be written in the long-lasting and durable Court and Chancery hands, or manner of writing, made out of the old *Saxon*, *Gothick*, and *Rounick* Characters, as they were wont to be, and had been for many ages before, but in a *Secretary* hand, not that strong and legible hand heretofore used, but a kind of Jack-an-Apes hand, composed of *Antick* frisking undistinguishable letters, so written with the side of a

Pen

Pen and ſmall ſtic, as that ſcratching rather then writing hath been often ſeen, not to be able to keep company with the Parchment it was wrote upon, the ſmall period of *Oliver Cromwells* wickedly uſurped Dominion.

Which needleſs change and novelty, with other the doings of the Factious and Rebellious, ſo wrought upon the minds of the rudeſt ſort of the people, to the joy and comfort of thoſe who thought themſelves to be ſpecially Godly, as the Lawyers could not paſs in the Streets without many reproaches, and not always without the ſcorn of being asked if they had any *Latin*, by thoſe that did never underſtand it, or were ever likely or in a capacity to do it. And *Pride* the Drayman, turned by an accurſed Rebellion into a Colonel, could ſay, that he hoped ſhortly to ſee, or it would never be well untill the Lawyers Gowns were like the *Scottiſh* Colours hung up in *Weſtminſter* hall. So great was his and his partiſans malice and hatred to thoſe Laws, which once they ſeemed to be ſo much in love with, profeſſed and covenanted to maintain.

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In the ſame year that ſo remarkable *Thomas Elſlion*, calling himſelf a member of *Jeſus Chriſt*, and of the *Engliſh* Commonwealth, *a free-born perſon of the* Engliſh *Nation*, *Eſquire at Arms*, *Conqueroar of the Gentlemen of the Long Robe*, now or late the *Satan* of the Commonwealth, in his Book entituled *The true Mariner*, with his Metaphorical and Hieroglifical Ship demonſtrating the way to *Paradice*, dedicated to *Oliver Cromwell*, ſaith the *Prothonotaries* and *Regiſters* in the Courts of Juſtice are immenſe *Foxes*, the Attorneys and Clarks *Kindle-coals*, the Bum-bailiffs, Serjeants at Mace and Marſhals-men, *Serpents*, *Toads*, *Rats* and *Mice*.

James Stocall Colonel of a Regiment of fifteen hundred men in the Iſle of *Jerſey*, propoſed, that *if a man be overburdened with Debts and impriſoned, and his Eſtate not able to pay, he ought if he come into Court and affirm it upon his Oath, to be freed of all his Creditors, ſo as he do leave them what he hath whereby to ſatisfie every Creditor according to the priority of every mans Debt.*

Shortly after followed Proposals by some *Chancery Clarks*, aiming to hurt their Masters the *Six Clarks in Chancery*, and make what benefit they could for themselves, that *twelve ancient practising Clarks to be chosen two out of every Office, by the major votes of the Clarks, and presented to the Lord Keeper, Lord Chancellor, or Lords Commissioners of the Great Seal, and out of them to be chosen some Overseers or Superintendents, and to have an Annual stipend; the Subpœna Office to be nulled, and those Writs to be made by the Chancery Clarks; the Affidavit Office to be taken away, Damages & Costs to be ascertained, and none to take any more Fee in that Term for any particular Cause, and no matters to be referred to Masters of Chancery but Accompts.*

Charles George Cock would have *Vsuries abolished, and no Arrest, and that there be only a Summons without a Writ or attaching the person, and if twice summoned let him be proceeded against upon his Goods.*

In the year 1652. *Gerrard Winstanley* published his opinion, that *the Kings old Laws cannot govern a free Commonwealth,*

and it is not possible for a people to be too free; and in a Book entituled, *The Law of Freedom, or true Magistracy restored*, complaineth, that *Tolls in the Market are a burden, that the Gentry do oppress the Common people, live idly upon their labours, and carry away all the comfort and livelihood of the Earth*; *that the powers of Lords of Manors do remain still over their Brethren, requiring Fines and Heriots, beating them off the free use of their Commons*; *the Commoners have cast out the King, therefore they are in equity free from the slavery of that Lordly power, and that it will blast the power of the Parliament and Army to see the Government of the Commonwealth to be built upon the Kingly Laws and Principles, and that all slaveries and oppressions which have been brought upon mankind, have been by Kings, Lords of Manors, Lawyers, Landlords & Divines, who ought to be cast out*; *and prayeth that there may be a Judge in every Shire, Peace-makers in every Town, Overseers and a band of Souldiers attending them.*

Another proposeth, that *instead of an Arrest a Summons might be sufficient*, and *if no Appearance Judgment and Execution to pass.*

In the year 1653. in a Book entituled, a ſupply to a draught of a Syſteme propoſed by a Committee for the Regulation of the Law, it was deſired, that *none be arreſted, attached, moleſted or troubled by any Original or other Writ.*

And thus whilſt too many addle-headed Reformers were labouring to eſtabliſh wickedneſs by a Law or Authority, and the major part of the Members of the miſcalled Parliament having as they thought rear'd their deſigns to that height and nearneſs of accompliſhment, that they took themſelves to be *Officers of Righteouſneſs*, elected and choſen to do wonderfull things, that *Gods will might be done on earth as it was in heaven*, that *every one might be holy, and the Pots, yea the Bells upon the Horſes*, as they were pleaſed to phraſe it, *might be holineſs unto the Lord*, and *that God might reign and be all in all*; they (did in that hurry and fit of Zeal, without any ſolid or rectified reaſon, cauſe or conſideration, without the hearing of any defences to be made againſt their ſuppoſed to be infallible Judgments, (Vote that the High Court of Chancery, and all

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the other Courts at *Weſtminſter-hall*, ſhould be diſſolved and no more made uſe of; and a Member of that Society, and a Burgeſs for the Town or Univerſity of *Cambridge*, who might have done well to have diſwaded his Election until he had learned more wit, was ſo willing to have the Civil Laws here uſed to be deſtroyed, or ſet packing with the Common Laws, as he could not forbear crying out, *Mr. Speaker, one word I beſeech you, for Jeſus Chriſt let the Civil Law alſo be put down.* But that not well according with the ſentiments and purpoſes of *Cromwell* their *man of Sin*, who had deſigned to trepan them to deliver up their fancied Parliamentary Government, and to bleſs God for the yoke and inſtrument of his own making, whereby he as a ſingle perſon had with many curbing contrivances a future abſolute lawleſs and unlimited power and Authority, he did for the better preſerving of the Juſtice of the Nation, for the adminiſtration whereof he intended to make himſelf an allowance of Two hundred thouſand Pounds *per annum*, and well underſtood to be as neceſſary in a Common-

wealth

wealth as it had been in the best of Monarchies, and some other his reasons of State, whilst those Dreamers of Godly Reformations had upon his Summons and Command refused to dissolve or come out of their opinionated Senate or Parliament-house, cause some of his Janisaries or Red-coat Souldiers to pull them out of the House, and lock up the doors.

And their ungodly and particular interests having thus enticed the vulgar and less considerate part of the people, too many of them made all the hast they could to pull in pieces the frame, and the noble ever to be admired constitution of our Government, where they could be sure of hopes of gain, and losing nothing by it, and joyning with some Lawyers of the smaller size that wanted Practice, and expected imployments by a Renverse of our Old Laws and setting up New, the sinews and foundations of our Laws were endeavoured to be cut, Monarchy, Justice and our Laws enforced to dwell in the Tents of *Mesech* and *Kedar*, and lying amongst the Pots, and the Wolves made the Guardians of the Sheep and Lambs;

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the Tenth Commandment in the Decalogue was bid to ſtand off, and not trouble it ſelf with their buſineſs, until they could be at more leiſure to talk with it or underſtand it; every one was rooting up the foundations, and like thoſe that are too buſie in breaking bulk, or taking the ſpoil of a diſtreſſed wreckt Ship, the wild Boar brake into the Vineyard, and the Swine into the Garden and Bed of Spices, unto whom the Roſe of *Sharon* and the Lilly of the Vallys, the charming Hyacinth and Tulips, and glorioufly adorned other flowers, and the filth of a Dunghill were in their granting capricious ſenſe of an equal if ſo much value and eſtimation.

And Mr. *John Dury* a *Scotiſh* Miniſter, who had before in the reign of King *Charles* the *Martyr* by good approbation of divers of our Biſhops and Learned men of this Nation, and many learned and worthy of the Reformed Churches beyond the Seas, endeavoured a better agreement betwixt the *Lutheran* and *Calviniſts*, had no time or labour ſpare to bring his Countrymen and their mad Brethren of *England* into

their

their wits again, but for some Preferment had or promised was so well contented to sing the Changes with them, as he could not let such things pass without some blessing or Grace said unto them, or a box of what he took to be a more special Balm of *Gilead*, bestowed upon them for the ease and comfort of such a small number as should be troubled with tender and puling Consciences, as he did in his Re-proposals licensed by Mr. *Joseph Caryl*, declare, that

Mr. Jo. Dury's Re-proposals.

God by an extraordinary way of providence had shaken the foundations of this Kingdom, and turned it into a Commonwealth, believed that the just Judgment of God had brought it upon those who without any respect to tender Consciences, did press the ensnaring former Oaths of Allegiance and Supremacy, and the Covenant, and laid them as stumbling-blocks before their Brethren; conceived that the requiring a general promise from Subjects, to perform an undeniable and unquestionable duty to the Commonwealth wherein they live, by those that have the power of affording or refusing Civil protection, is not in the same nature with those former Oaths and Subscriptions;

And

And that he should pray and intercede for such as are under the trouble of their own Spirits, and fear of sinning, that the many years experience of their quiet behaviour and faithfull services may be accepted towards a just degree of security and assurance for future peaceableness.

In the same year Mr. [illegible] *Gray*, a prisoner in the Compter of *Woodstreet* in *London* for the non payment of Tithes, would perswade as many as would be so foolish as to believe him, that *Tithes were a curse to all Nations but Canaan, and a vexation to all people but the Hebrews.*

In the year 1654. Mr. *John Rogers*, once a Minister of the Church of *England*, but afterwards a fiery zealot of Rebellion, by his Book fuller of railing then truth or reason, entituled, *Sagrir, or Doomsday* drawing nigh with Thunder and Lightning, in an Alarm for New Laws and the Peoples Liberties, from the *Norman* and *Babylonian* yokes, wherein he calling the Lawyers *Tyrants and Locusts*, saith, that it is *high time and more then time for the people to know their Rights, Priviledges and Freedom*, that

Mr. John Rogers Sagrir.

all that are past Children and Fools should call for them, and that it concerns all to write, print, publish and declare against the Norman Tyranny of Laws and Lawyers, and that he doth it with as much assurance and confidence as if he had a halter about his neck, and were to endure the penalty of the Locrian Laws for failing in what he should alledge against them; that the Lawyers are Antichrists State Army of Locusts, and that the people have been robbed of their Rights to this day by the Income of corrupt Laws and Lawyers, the true rise of their interest, Terms of Court, and trades by Sin; that none are suffered to plead but Lawyers, or such as are brought up in their Courts and Inns, in their trade, cheats and tricks, to sell the Law at a large rate to Chapmen called their Clients; and would make it to be no small grievance, that men are imprisoned for Debt, every man may not plead his own cause, and that there are not County Judicatories to hinder the great charges put upon the Nation to prosecute their Suits at London and Westminster.

Mr. Boone an Attorney, or something of a Lawyer, with his name wrapt up in an Ana-

Anagram, in his Book entituled *Examen Legum Angliæ*, published in the year 1656. whose reading of good Authors mentioned in his Quotations might have better informed him, and made him of another opinion, will not allow of any of our Laws that do not agree with the *Mosaical*, or were not derived from them, or of any which were made or allowed of in the times of Popery, but saith, that *the Law of England as it is now in use is a departure from the Law of God, and a taking of a Law from Heathens and Idolaters; that the whole body of Popery is in a manner comprehended* in Littletons *Book so much commended by* Sir Edward Coke, *and that the old Statutes made in the affirmance of the Common Law, and the Books and Entries whereof he makes mention, are stuffed with all manner of impieties & errors, that* Magna Charta & Charta Foreſtæ *do not appear to be any Acts of Parliament, although they be so called; that chiefly therein was intended the advancement of the Romiſh power in a Tyrannical Government; that the Statutes of* Marlebridge, Weſtminſter *the firſt, and the reſt of the old* Sta-

Boons Examen Legum Angliæ. ca. 3 4, 5, 6, 8, 10, 11, 12, 13.

Statutes ſaid to be declaratory of the Common Law, do ſavour of the power of Antichriſt, and do contain in them manifold impieties and ſuperſtitions; that the Statute of 24 E. 1. *concerning Eccleſiaſtical Judges, and the Statute made in* 9 E. 2. *concerning Prohibitions, Clarks convict, Prelates, Spiritual Courts, Excommunications, Abjurations, power of the ordinary Fees of the Church, Superſtitious Houſes, Monaſteries, Parſons, Parſonages, containing ſixteen Chapters, are nothing elſe but Popery, and the advancement thereof; and the like may be ſaid of* 25 E. 3. ca. 3, 4, 5, 7, 8, 9. *concerning lapſes of Benefices, Clarks convict, Ordinaries, &c.* that *ſuch cauſes as do chiefly require remedy in a Court of Equity, may eaſily be determined by Judges in Courts of Law; Common Recoveries for aſſurance of Lands, are nothing but a pack of lies*; that *the Theory of the Common Law, and ſome of the Statutes now in force, do contain matters repugnant to the Law of God*; that *moſt of the old Statutes, as well ſuch as are ſaid to be in affirmance of the Common Law, as others introductory to new Laws, do contain in them great oppreſſions and wrong to*

the

the people, and ought to be amended; that the general execution of the Laws, as it is now practiſed, is an oppreſſion to the whole Nation; that trivial and impertinent Suits are brought out of the Countries to Weſtminſter, *and thereby all inferiour Courts are deſtroyed:* and propoſed *a publick Regiſtry to be in every County of all Entails, Mortgages and Statutes, that before any cauſe or Action be entred in any Court, or come before the Judges, peace be offered by the Plaintiffs, and that wiſe men be appointed to take up Controverſies; that all the Tithes and Glebe Lands with other things called Church-duties, may be ſold, and a competent means provided for the Miniſters of the Goſpel.*

In a Book entituled *Englands* ſafety in the Laws Supremacy, and publiſhed in the year 1659 it was amongſt other things required as a Law including the people: Liberties, that *no man be impriſoned for Debt, but that all Eſtates real and perſonal be liable for diſcharge of Debts.*

In the ſame year in a Pamphlet entituled, the humble deſires of a Free Subject, it was deſired, that *not any of the free people of the*

three

three Nations and Territories thereunto belonging, ſhould not be moleſted or impriſoned, or have any violence offered to their perſons, but ſhall have full power and liberty to ſeek for their redreſs unto the Law, and the Courts of Juſtice, according to the ancient conſtitutions of the Laws of the three Nations.

In another owned by one Mr. *James Frese*, entituled, the outcry and juſt Appeal of the enſlaved people of *England*, to be delivered from the inſupportable oppreſſion of lawleſs yokes of miſery, it complains, that *thouſands of people are ruined and robbed in their Eſtates, Liberties and Lawes, by Arreſts and Outlaries, and prayeth that the Writs of Capias may be aboliſhed, and the impriſoned ſet free, which would work the total downfall of Satans throne of Injuſtice, cruelty and oppreſſion, even of the four Fairs kept in* Weſtminſter-hall *by the ingroſſers of pretended Juſtice, where and by whom men are daily bought and ſold in their Eſtates, Rights and Liberties.*

Some of the Inhabitants of *Hull* did petition, that *the Laws by which the Commonwealth is to be governed, may be thoſe holy,*

juſt

just and righteous Laws of the great and wise God; and declaring, that *the Nobility are the Pillars and Buttresses of Monarchy, and Citadels of Pride and Tyranny, ought to be only during life*; that *the Divines, the Lawyers, and hereditary Nobility, are irreconcilable Antagonists to a Free-State*; adviseth *an Agrarian Law, that the proportion of Lands be stinted, and a rotation of all Offices and imployments, that those which are capable may tast of rule, as well as subjection.*

In a Book called *A Rod for the Lawyers*, they are called *the grand robbers and deceivers of the Nation, greedily devouring many millions of the peoples money*; and it alledgeth, that *there are in* England & Wales *of Judges, Lawyers, Officers, Clarks, Attorneys, and Solicitors, above* 30000, (a quarter of that number, at the largest reckoning, being not to be found of them) which admitting that each of them do get 250 *l. per annum*, (very many of them not getting 100 *l. per annum*, many not 50 *l. per annum*, and many not 10 *l. per annum*, or so much as the *Rag-gatherers* in *London*-streets do, who take

take it to be an ill week that yields them not 10 *s.*) it will ſaith that Calculator amount unto *ſeven millions and an half per annum*, beſides the charges of riding to and from *London*; whereas if ever there were ſuch a number to be proved, there are greater numbers of Carpenters and Smiths who do yearly gain as much as the ſmaller ſort of the Law Profeſſion do by their as neceſſary labours.

In a Declaration and Proclamation of the Army (as they called themſelves) of God, publiſhed in the ſame year, they did declare and reſolve, *by the help of God that there ſhould be liberty of Conſcience, but not of Sin; Godly Laws to be enthroned, but not the Jews; Judges to be in every City, but not impoſed; Priſon doors ſhould be ſet open, to let out Debtors to labour towards the payment of their Debts; and look'd upon it as the voice of God calling upon them, and giving them an opportunity*; and therefore deſiring *aſſiſtance in ſo great an enterprize, by as many perſons of note and ability as God hath made willing and able, together with themſelves, to put in ſufficient ſecurity for the performance thereof,*

Declaration of the Army in *Anno* 1659.

thereof, did intreat them to ſend in their names to Mr. Livewell Chapman, *Book-ſeller in* Popes-head-alley *by the* Exchange, *who hath promiſed to keep them ſecret untill by ſober and frequent meetings the matters may be digeſted fit to be preſented to the Parliament and chief Officers of the Army.*

Where if the Propoſitions do prove acceptable, there will be a ſum of 500000 l. *ready towards performance of the ſame.*

And in the Plea called the Armies Plea it is alledged, that *the peoples ſafety is the chief Soveraignty of all Laws, Statutes, Acts and Ordinances, Covenants, Engagements, Promiſes, Subſcriptions, Vows, Oaths, and all manner of obligations and expreſſions thereof, and are only binding to the Publique ſafety, and not to the perſons of the Governours or forms of Government, but with reference thereunto, and as principles of truth and right reaſon brought to light by the late Parliament.*

And one being willing to come on as faſt as he could, and keep company with thoſe goodly aſſertions, ſaith, that *it is not lopping the branches, or cutting off the Top branch of*

Monarchy, that will deliver a Nation from bondage, unleſs the Axe be laid to the root thereof, to the evil root of bitterneſs whence ſprings all our miſery, to the root of every uſurping and domineering Intereſt, whether in things Civil or Divine.

The number of Freeholders being much increaſed, hath had a natural and ſtrong tendency towards a Commonwealth; no Government can be fix'd in this Nation, but according to the Ballance of Land; that Prince that is not able neither by his own or the publique Revenue, in ſome meaſure to counterpoiſe, if not over-ballance the greater part of the people, muſt neceſſarily be Tenant at will.

Another in his Arguments and fancied Reaſons againſt the office and title of Kingſhip, publiſhed in the year aforeſaid, ſaith, that *the Office of a King makes way for an Act of reſumption, and the unſetling of mens Eſtates; that the aboliſhing of Epiſcopacy and Peerage, and the eſtabliſhing of Liberty for Tender conſcienceer, were not the ground of the Wars, for nothing appeared at the firſt but the Militia, the Negative voice, and the removing of Evil Counſel, the other things were*

brought

brought into the quarrel in the progreſs of the conteſt, by an higher hand of providence than mans purpoſe.

One of the ſame company and School of contrivances deſired publickly, that *no man ſhould be impriſoned for Debt, except ſuch as are doubted to be running away, and then not above three days, and to be maintained by the Plaintiff at* 3 s. *a day in the mean time.*

In a Book ſtiled the *Good Old Cauſe dreſſed in its Primitive luſtre*, ſaid to have been written by *R. Fitz-Brian*, it was inſinuated, that *the diſtempers of the Nation being ſo great, as they could not admit of a redreſs and conſerve ſtill their old frame, things muſt unavoidably wheel about and fix themſelves upon another Baſis; Providence united the honeſt party of the victorious Army, ſo as it was reſolved that the poor who had nothing to pay their Debts, ſhould be freed from the bondage of a perpetual Confinement; the corruption of the Laws were become at once both the ſhame and impoveriſhment of the Nation, and ſome Expedient was to be had for the freeing of it from ſo horrid a Cheat; Divine providence did by degrees*

point out a neceſſity of the change of Government, and Kingſhip being laid aſide as unneceſsary, chargable and dangerous, it was devolved into a Commonwealth: It being a certain rule, that corrupt and degenerate States cannot be perfectly healed and regulated, but by ſtepping into thoſe forms which are the farthest diſtant from that wherein they were corrupted.

Backed by an Anonymous Author, who being deſirous to try an experiment, as well projected as that of the cutting the Moon into Stars, to make the greater light, and ſave the expence and trouble of Candles; and to contrive a way for the ruining at once of many of our fundamental Laws root and branch, doth in a Book entituled a *Chaos*, or frame of a Government by way of a Republick, printed by the ſaid *Liewel Chapman*, endeavour a creation of new Laws out of a confuſion of his own making, wherein as a well-willer to the Publique, as he ſtiles himſelf, but a greater to all at home, he doth in order and reſpect (which there will be no reaſon to believe) to the Lawyers profit, and to the peoples enjoyment of

Magna

Magna Charta, propound *National, Provincial, Subprovincial and Parochial Regiſtries, to which Courts all cauſes of Civil concernment are to be reduced; all Suits in Law or Equity to be determined in ſix months, upon a penalty to the Judges, and loſs of Cauſe to the Client, whether Plaintiff or Defendant, if guilty of delay; the Judges in Chancery to ſit* de die in diem, *the Itinerant Judges to determine all Cauſes that ſhall be tryed before them, and a Term of a month to be at* Weſtminſter-hall *after every Circuit, for the determination of matters of Law, with rules to be given for the Juriſdiction of each Regiſterial Court; a National Regiſtry to be appointed at* Weſtminſter, *to conſiſt of a Regiſter and ſix Clarks Aſſiſtants or Deputies, which may have each as many writing and examining Clarks under him as the buſineſs ſhall require; each County of* England *to be one entire Province, and thoſe allotted to the Juriſdiction of the ſaid ſeveral ſix Clarks and Deputies,* viz. *ſo many Counties as are compriſed within the ſeveral Circuits of the Judges; in every Shire-Town a Provincial Regiſter, and he to have two Clarks aſſiſtants,*

who

who ſhall as to the imployment divide the Province; only Yorkſhire *is to have three Clarks aſſiſtants, who are to divide according to the Ridings; Subprovincial Regiſters to depend upon the Provincial, and to have one Clark aſſiſtant; every Pariſh, or two where one is too little, to have one Regiſter and a Clark aſſiſtant; every perſon having Eſtates in two or more Counties, ſhall enter their Eſtates and Annual values in the National Regiſtry of each Circuit; and all that have any claim or right in poſſeſſion or reverſion of Lands of Inheritance of the yearly value of* 1000 l. *or upwards, ſhall enter it accordingly, and of the yearly value of* 100 l. *and under* 1000 l. *either in poſſeſſion or remainder, are to enter it with the Provincial Regiſter; all perſons having Eſtates above the clear yearly value of* 10 l. *and under* 100 l. *are to enter them in the Regiſtry in the Hundred or Wapentake of the Province, and all not exceeding* 10 l. *per annum, to be entred in the Parochial Regiſtry; all Debts exceeding* 1000 l. *to be entred with the National Regiſtry, all above* 100 l. *and not exceeding* 1000 l. *with the Provincial Regiſtry, all*

above

above 10 l. *and not exceeding* 100 l. *with the Subprovincial Regiſtry, and all under* 10 l. *with the Parochial Regiſter where the Debtor inhabiteth, or his Eſtate lyeth: And when ſuch Entries are perfected, the National Regiſter ſhall within* 14 *days certifie it unto the Provincial, who ſhall within* 8 *days certifie it to the Subprovincial, and he within* 6 *days to the Parochial Regiſter: And where ſeveral claims under ſeveral titles ſhall be made unto one and the ſame thing, the Regiſter ſhall give notice thereof to the ſeveral Inhabitants and Tenants thereof; the Parochial Regiſter ſhall likewiſe certifie to the Subprovincial, the Subprovincial to the Provincial, and the Provincial to the National Regiſtry; the Seal of the National Regiſtry ſhall be the Great Seal of* England, *to be kept by the Regiſter and his ſix Clarks, and nothing to be ſealed but in the preſence of the National Regiſter, and two of his Clarks aſſiſtants; each ſeveral Province ſhall have his peculiar ſeal, whereon ſhall be the Arms or cogniſance of the Province, City or Corporation wherein the Regiſtry is, and ſhall be in the cuſtody of the particular Regiſter or his Aſſiſtants; and in*

like

like manner for the Subprovincial and Parochial Regiſtries. The ſeveral Regiſters where no double claim is entred, ſhall give Certificates under their ſeals of any Entries which ſhall be deſired; Claims not entred within three months, unleſs in caſe of Infancy, Death, or being beyond Sea, ſhall be an abſolute bar; Entry to be made within three months after the eſtabliſhing of the Regiſtries; Certificates to be made under ſeal to any that ſhall deſire it, which ſhall be a ſufficient warrant for the recovery thereof, without any further trouble to the Creditor then to make his claim thereunto. All manner of Bargains and Contracts, where any Eſtate of Inheritance, Mortgage or Leaſe ſhall be made, or any right transferred from one to another, all Covenants, Conditions, Conſiderations, and Times of payment in the preſence of the ſeveral parties, ſhall be made before the ſeveral Regiſters, certified under his ſeal, delivered to the Creditor, and Counterparts to the other parties. And Entries made of payments and diſcharges of Bargains perſonally by the parties in the preſence of two known witneſſes, unleſs where the parties Bargaining ſhall be ſufficiently known to the

Regi-

Regiſter or his Deputy; all Marriages to be entred in the Parochial Regiſter, the Covenants and Conditions of the Marriage to be entred and certified under the ſeal of the Regiſter, who is alſo to enter the Chriſtening of every Child; deaths and burials of all perſons; all Wills and Teſtaments; the hiring and wages of Servants to be entred in the Parochial Regiſtries, and Certificates under ſeal given thereof; the Fees for entring any Eſtate of Inheritance in the National Regiſtry 20 s. per page, for the two firſt pages, and 40 s. for every page more; for all Leaſes, Mortgages, Jointures, Dowers or Debts, 10 s. for the firſt page, and 20 s. for the following pages, including the Fees for the Certificates; for all Entries of Inheritances in Fee in the Provincial Regiſtry, 10 s. for the two firſt pages, and 20 s. for every page more; for all Leaſes, Mortgages, Jointures, Dowers or Debts, 7 s. 6 d. for the firſt page, and 15 s. for every following page, Certificates included; for the entry of every Inheritance in Fee in the Subprovincial Regiſtry, 7 s. 6 d. for the firſt page, and 16 s. per page for every page after; and for all Leaſes, Mortgages, Jointures,

tures, Dowers or Debts, 5 s. for the first page, and 7 s. 6 d. for every following page; for the entries of Inheritances in Fee in every Parochial Registry, 5 s. for the first page, and 7 s. 6 d. for every page more; and for all Leases, Mortgages, Jointures, Dowers or Debts, 2 s. 6 d. for the first page, and 5 s. for every following page: And in case any of the Entries of Debts, Leases, Mortgages, Jointures or Dowers, shall not exceed 6 lines Registerially writ in the Parochial Registry, the Fee thereof shall be but 2 s. the Fees for the Certificates excepted; the Fees for Entry and Certificate of every Birth, Christening, Death, Burial, in the Parochial Registry, if it exceed not 6 lines, to be only 6 d. as also for the retainer of any Servant or Apprentice; but if it shall exceed, then the Fees to be according as was allotted per page.

No money shall be recoverable upon any Bargains or Contracts whatsoever, unless the same be entred in the Registries aforesaid, within the times limited; the Fee of the Seal of the National Registry, in all cases of settlement of any Estate, Lease, Mortgage, Jointure or Dower, to be 5 l. in all cases of Debt, not

exceeding 2000 l. the Fee to be 50 s. Otherwise 5 l. the Fee of every Provincial Seal in the cases aforesaid 50 s. in all cases of Debt 25 s. and in all cases of Debt, Mortgages, &c. to be 12 s. 6 d.

In the National Registry 3 4th. parts of the Seal shall be to the Commonwealth, and a 4th. to the Register, and his assistants and Clarks, for all entries of each two first pages of every particular Entry, and for all the following pages an 8th. part only; in each Provincial Registry 3 4th. parts of the Fees for the Entries, and for Seals also, to be to the Commonwealth, and the 4th. to the Register, his assistants and Clarks; in the Subprovincial Registry 2 parts of 3 of the Entries and Seals to be to the Commonwealth, and the 3 to the Register; in the Parochial Registry 2 parts of 3 of the Seal to the Commonwealth, and the 3 of all the Fees of Entries to be to the Register, his Clarks and Deputies.

Every Clark, Assistant or Deputy of the National Registry, shall have six sworn Attorneys or Messengers, whose care shall be to transmit his several Certificates to the several

ral Registries of the Provinces, solicit the causes in the said Registerial Court, and have for every cause in every Court-day, besides all charges, 7 s. 6 d. and no more; every Clark assistant in each Provincial Registry shall have 3 Attorneys or Messengers, who are to officiate as in the National Registry, and have for every cause in which any of them shall be employed 5 s. for Fee and no more, besides charges and expences; each Subprovincial shall have 2 Attorneys, who shall do the same work, and for every Court day shall have for Fee in every cause 4 s. besides all charges; each Parochial Registry shall have 2 Attorneys, (which according to the number of 9715 Parishes in *England* and *Wales*, will make almost 20000 Attorneys, besides their Clarks, which with Solicitors and their Clarks added unto them, will more then three times exceed the number of Attorneys, Solicitors and Clarks, if truly accompted, now in being) *whose Fee shall be for every Court day 3 s. besides charges, and shall do the like as is before directed; every Attorney shall be punished for fraud or neglect, and make satisfaction to the Client for*

all damages; and if not able to do it, shall be dismissed of his place, another chosen, and the Client restored to his former condition; the Clark assistants to be chosen by the respective Registers, upon security to be given, and they are to give directions unto them, and be responsal for them); each Clark assistant in the Provincial Registry shall make choice of one Attorney, and the Register of the

The Judges in the several Parish Courts shall be the Register, the Minister, and the Constable and Churchwardens for the time being, whereof in all hearings two to be present, with the Register or his Deputy; the several Courts to be kept every Thursday fortnight, and all matters to be brought to hearing the 3d. Court day, and to hold pleas of all Debts not exceeding 10 l. principal, and all Estates under 10 l. per annum, lying in the same Parish; 12 Judges learned in the Law to be appointed by Parliament to attend the National Registerial Court; 2 Judges be appointed to attend every Provincial Registerial Court, where one Judge at least is to be present, with the Register and one Clark assistant, when all matters are to be heard; every month shall

be

be a Court Provincial, upon the Tuesday in every week, the Subprovincial Court every Friday 3 weeks, and the Judges to be the Register and his Assistant, and the Minister of the Parish.

All Summons to be granted upon motion of the party or his Attorney, (giving security to defray the charges of the party to be Summoned, if his Action be not good, or cause just) by the respective Registers, their Clarks Assistants or Deputies, in writing under their hands, unto which if Apparance shall be given either in person or by Attorney, the Cause is to proceed; but if no Apparance shall be given, a second Summons is to be granted under the seal of the Register, to which if no Apparance shall be given, Judgment shall be given the second day of Apparance, and entred in the Court Registry; and if agreement intervene not before the next Court day, and be entred with the Register, Execution shall be granted, and the Registers seal put thereon, not to be reversed or any appeal admitted.

Two Visitations in the whole year to be in the National Registry, as to the trying of Causes,

the

the one from the first of December *to the tenth of* February, *and from the last day of* May *to the first day of* September.

But that *Chaos-maker* or good man, if any one could find any cause or reason to call him so, yet some of his Partisans, when they shall have remembred it themselves, or have heard it from others, that the Noble and innocent Earl of *Strafford* was by false witnesses and accusations, remote and improbable inferences, strained constructions, and never like to happen consequences, hunted to death upon a supposition of subverting the Laws, when if it had been either possible or true, it could upon an Accumulation of all his pretended Crimes have extended no farther than that a man endeavours to subvert one of our Fundamental Laws, may be their own Judges, convict and justly condemn themselves for unpardonable faults, in seeking to subvert so many of our Fundamental Laws *two Ides*, with one stroke, and at once, which they themselves have sworn to maintain and defend.

A

Not-

Notwithstanding all which *Oliver Cromwell* did so well understand his own interest and *single-personship.*

CHAP. XVII.

That neither Oliver Cromwell *or his Son* Richard, *the second* mock Protector *or* little Highness, *did conceive it to be reasonable, or had any intention to deliver up the Justice of the Nation to those ignorant giddy and ever changing kind of Reformations.*

AND that the administration of Justice was a great end, and one of the principal parts of Government, and remembred that the *men of Westminster* (of which he was too great a member and director) calling themselves after the murther of the King, a Parliament, did the 9th day of *February* 1648. declare, that *they were fully resolved to maintain, and should and would uphold, preserve and keep the Fundamental Laws of this Nation, for and concerning the* pre-

Declaration of Parliament 9 *Feb.* 1648.

preſervation of the lives, properties, and liberties of the people, with all things incident thereunto, and required *all Judges, Juſtices, Sheriffs, Officers and Miniſters of Juſtice to proceed in their reſpective places and offices accordingly*; and did the *17th.* day of *March* then next following, declare, *That our Laws being duly executed, are the moſt juſt, free, and equal of any other Laws in the world, and that they were very ſenſible of the excellency, great antiquity and equality of them, and that the liberty, property, and peace of the Subjects were fully preſerved by them*, did ſo little believe it to be for the good and honor of the Nation to hearken or yeild unto the product of thoſe wind-mil, giddy, and vertiginous brains; or by the perſwaſion of ſome idle and ridiculous Pamphlets, written and contrived by ſuch as would for their own advantages plow up the Laws and reaſonable cuſtomes of the Kingdom, to ſettle and ſet up a Weather-cock Government ridiculous to all other Nations, as he did in his Speech to that which he called his Parliament upon his Diſſolution of them the *12th.* day of *September*

Declaration of the Parliament of England 17 March 1648 expreſſing the grounds of their ſetling the preſent Government in the way of a Free-State.

Cromwel's Speech to his Parliament upon his Diſſolution of them the 12th. day of September, 1654.

tember 1654. declare, that *in every Government there muſt be ſomewhat fundamental, ſomewhat like a Magna Charta that ſhould be unalterable, that ſame things are Fundamentals, which he ſhould deal plainly with them may not be parted with, but were to be delivered over to poſterity, elſe every ſucceeding Parliament would be diſputing to change and alter the Government, and we ſhall be as often brought into Confuſion as we have Parliaments*; and he and his Parliaments in the time of his hypocritical Government did ſo little reliſh the taking away of the proceſs of Arreſt and Uſury, as they ordered only priſoners to be diſcharged out of priſon, if they made Oath that they were not worth five pounds after their Debts paid, and undertake to pay their Debts when they ſhould be better enabled, which to procure their liberty, made many luſtily to Forſwear themſelves, and had no great cauſe to be in love with their pretended Reformations, when the fiery Mr. *John Jones* of *Nayoth* was after his abuſing and rayling upon our Laws found guilty of deceits, and committed by them a priſoner to the *Fleet*.

And

And when in the year 1653. or beginning of the next enſuing, by an Act of Parliament had for the relief of Creditors, conſtituted a Committee for *London* and the Suburbs thereof to ſit at *Salters-Hall*, and ſeveral other Committees in all the Counties of *England* and *Wales*, and impowred them *to be the only Judges, though not Sworn, to hear and determine matters of Debt, and eſcape to fine for breach of truſt and concealments, impriſon, ſet at liberty, remaund to priſon, adjudge to the Pillory, or houſe of Correction, grant, leaſe, or ſell the Eſtates of the priſoners, were to admit of no legal forms, but proceed in a ſummary way, and to be reſponſible to none but the Parliament, and ſell dead priſoners Eſtates as well as if they were living, whether the Lands were Entailed or no.* It was upon complaint of ſome priſoners of Note and Worth, alledged and offered to be proved that one of thoſe kind of *Judges at Salters-Hall having two Brothers practiſing before that Committee, the one as a Solicitor, and the other as a Councellor at Law, would bring his party with him, whiſper unto his Fellow-*

Remonſtrance of the priſoners for Debts to the Parliament concerning the injuſtice of the Committee ſitting at Salters-Hall in London for relief of Creditors and Priſoners.

Judges, arise from the Bench, and go and sit by the Clark, and make the Orders as he pleased and liked those his doings so well, as he was heard to say he did not doubt but to make his place worth 1000 l. per Annum unto him before he had done with it, and might be in good hopes of it, when besides those his ungodly Extraordinaries, large Salaries were allowed to him and his Brethren of that Committee for their Sons and Agents, and the gain which they and their Confederates might have by the sale, or indirect purchase thereof in other mens names, that Committee were to have distributed amongst them *two pence in the pound upon the sale of any prisoners Lands or Estates.*

The distressed condition of the Inhabitants of South-Wales.

The pretending *Gospel-Improvers* in *South-wales* had shut up most of the Churches, and gathered in the mean time one hundred & fifty thousand pounds into their private purses, and therefore both *Oliver* and *Richard Cromwel*, & their Councel & Parliaments did only receive those unquiet Innovators Petitions, and as they did in the determining of what should be In-

cumbrances fit to be put into a publick Regiſtry, or the taking away of Tythes make a ſhew of intending great matters, when they only hung them upon long delay's, and an everlaſting deliberation, never to be brought to any concluſion.

And our Laws having thus long fought with Beaſts like *St. Paul* at *Epheſus*, might by his Majeſties happy Reſtauration have given them no ſmall aſſurance that they ſhould have deſerved ſome reſt and tranquility; but it ſeems as the wrongs done unto them were unrepented, ſo were their patience and ſufferings to be prolonged.

And the profeſſors of our, or any other good Laws ſhould not be ſo contemptible, when that bleſſed Apoſtle could be no leſs than a Lawyer, when he ſate and had been Educated at the feet of *Gamaliel*, and was afterwards by his Apoſtolical Office, and great Endowments in all manner of Learning, ſuch a darling and beloved of God Almighty, as he had in his life-time the inexpreſſible joyes and wonders of the Third Heaven communicated unto him,

when

when they were before, and that time, and long after in better Ages of ſuch an eſteem and uſefulneſs amongſt the wiſer and better ſort of man-kind, as they were juſtly called *Sacerdotes Juſtitiæ*, Miniſters that ſacrificed for the people at the Altars of Juſtice, their Houſes were as Oracles, to which they came for councel and advice, and were accounted to be *Laudabile genus hominum*, a praiſe-worthy kind of men, and being ſecular men, did *in Campo Juſtitiæ tanquam Athletæ militare*, as their Champions labour to obtain Juſtice for their Clients; but thoſe abuſers of our Laws and Lawyers were too much in love with their projects to forſake them, and like.

Linwood in conſtitutionibus Othoboni.

CHAP. XVIII.

What occaſioned the continuance of the former Projects, and groundleſs Complaints againſt our Laws ſince his Majeſties happy Reſtauration.

THe Snakes had but caſt their skins, either for that the Fancies which had brooded in the heads of theſe troublers

of

of our *Israel* had as *lesæ Imaginationes* usually do in men oppreſt with Melancholly, ſtuck ſo faſt, and brought them to ſuch a habit or cuſtom as they could not eaſily remove them; or had a deſire to maintain and uphold an heretofore contracted or eſpouſed error, or to add wrongs to wrongs, leaſt they whom they had ſo much abuſed ſhould after ſeek to bring them under the cenſure and juſtice of thoſe Laws which they had ſo much injured; or were vexed that they had ſo unexpectedly loſt their prey, and the opportunities of building up again their *Bethel*, where their Calves were well fed & worſhipped for their ſeditious bleatings, and were the more emboldned by his Majeſties over-eaſie pardoning the wickedeſt Rebellion that ever was hatched in Hell, and permitting all but ſome few not only to enjoy all their former real Eſtate, and all their perſonal Eſtates, which had been gotten by Blood, and the Rapine and Depræda tion of all the honeſt people in his Three Kingdoms, but to creep into moſt of the profitable Employments of the Kingdoms of *England* and *Ireland*,

Ireland, (which would better have been managed by his more honeſt and loyal Subjects) eat the Childrens bread, and get all that could be any wayes gained or cobened from them.

And too many of them have grown ſo impudent as to offer to palliate their wickedneſs by a baſe and ſenceleſs Equivocation to cover their Woolviſh doings by the putting on of ſheeps cloathing, and make as many as could be ſo mad to believe it, that they were always for the late King the *Militia*, and loved and honoured him; as if thoſe their great Armies that fought againſt him in the bloudy Battels at *Edgehill*, *Marſton-moor*, and *Naſeby*, took his Towns, Caſtles, and Garriſons, Impriſoned and Murdered him, were ſome inviſible Fairies phantaſms, or ſpectres; and became ſo much Elated in the ſucceſs which they met with, by getting as much or more by counterfeiting of Loyalty after their Rebellion, as they did before in their acting and height of it as they hoped that they had now an opportunity put into their hands of accompliſhing their wicked-

ly

ly designed works of Reformation preparative to a Republique, some of their party being at this time, so more then they should be confident of it as they keep in the expectation of their *Good Old-Cause* as they do dreamingly call it, the Conveyances and Grants which they lately had of the Usurpers of the Kings, Queens, Bishops, Deans and Chapters, Nobility and Loyal Gentries Lands, as any other Evidences of their Estates, and do think it to be no bad exchange or bargain too, give double or treble the value of some of *Oliver Cromwell's* gold or silver Coyn as precious Reliques to put them in mind of that great *Stork*, who if he had lived longer, would have taught the *Frogs* what they were to expect of him; & too many of that Tribe or silly perswasions have lately been emboldned publickly to offer to maintain the lawfulness of those their ungodliest of all Wars, and might suppose themselves to be in no bad condition, when they were not like the *Gibeonites* after they had deceived *Joshua* with their mouldy bread, rent and tottered garments, Josh: 15,

with old shooes, put to be *hewers of wood*, and *drawers of water for the House of God*; but whilst they were inwardly in their hearts and endeavours the greatest Enemies of it, did eat of the fat of the Flock, and enrich themselves with the most profitable Offices and Preferments of the Kingdom, and not only deceive the Kings loyal Subjects of their Blessing due to the Birthright of their Allegiance, *and a priviledge inheritable for prosecuting their actions and suites at the Common Law*, but of the benefit of their antient, good, and equitable Laws, which is another part of their Inheritance, and did therein worse then *Jacob* did by his Elder Brother *Esau*, who did not loose all, but had a Mess of Pottage for it.

Calvins's case in Cokes 7 Reports, and Lord Ellesmeres post nati Mic: 12 E. 4. 22.

Or did in the pursuance of the former evil designes of themselves or their phantastical well-willers think it necessary to persecute our Laws by false suggestions, out-cries, scandals, and clamours, as Boyes have used to doin their hunting of Squirrels by noise and shoutings, and to speed as well therein as they, or many of the Re-

bellious

bellious rout did in their designes against Episcopacy, & the *Militia*, and to pull in pieces the Royal and ever to be approved Monarchical Government. On some of the Stationers having some of the Pamphlet projects and squibs against Monarchy and Regal Government lying upon their hands unsold, did to put them off in some approaching or sitting Parliaments of his Majesty, cause a new date or Year of our Lord to be instead of that which was before; some of that society or company being so egregiously wicked, as many Books have been sent abroad in a Masquerade in six or seven several Disguizes, or new Dresses and Titles to abuse the people and cozen them of their money; and a Primer-hinder & a Stationer may be named if an undertaken, to be proved Information do not prove to be otherwise, that have caused the Pamphlet that carried the Device of Summons, and banishing Arrests and Out-laries which had been long before published, to be re-published or printed, which like some Paper-kite with a lanthorn & candle in the taile or end of it had not

ſong before made the men of Novelty and Ignorance ſtand at a gaze at it. And it hath ſince his Majeſties happy Reſtauration been often obſerved, that too many of that Trade and Faction have been very dull in the preferring as they call it, or offering to ſale any Books which concerned the vindication of any of his Majeſties Rights, or the real good of his Subjects; but have been nimble enough to promote the vent or putting off any Books which tended to Faction, or the unhinging of the Government.

Or the Witchcraft of their Rebellion had with their Ignorance ſo captivated their underſtandings (if ever they were Maſters of any that tended to good) as to make them to be like too many of the *Laplanders*, who are ſaid to bequeath their *Devils, or evil Spirits to their Children, or any who ſhould ſucceed them*, more willing then they ſhould be, to tranſmit their ſins and unquietneſs of Spirit unto all that would make any Title to their rude and indigeſted Opinions.

Shefferus Hiſtory of Lapland, cap: 11.

Howſoever from ſome or all of theſe Cauſes,

Cauſes, not a few of the former wicked and never to be juſtified Principles, ignorant and unwarrantable endeavours and complaints have ſince Monarchical Government, and our Laws and Liberties were ſo happily reſtored, ſprung up again; and no ſooner was our *David* brought back over *Jordan*, but many a railing, curſing, and rebellious *Shimei* that had done more then *caſt ſtones* againſt him and his Royal Father, *made haſte*, *and came with the men of Juda* and Loyal party to meet him, and as if they had not remembred all the miſchiefs which they had done unto him, his Brethren, Royal Father, Family, and good people, pretended that they had been greatly inſtrumental in it, and having gain'd a very large and extenſive Act of general Pardon and Oblivion, (which as to treaſon, murder, felony, faction, and rebellion, the Loyal party needed not) an Act of Parliament for confirmation of what their abuſive Courts of Juſtice had done in matters of Judicature betwixt party and party in the *inter regnum*, and times of Uſurpation; and another Act of Parliament to make

make honest & free many Patentees earth from Adultery or Fornication, and legitimate and un-baſtar'd many of their Children begotten in a wrong way of Marriage ſolemnized in deſpite of the Laws and our Church of *England*, before a Juſtice of Peace, not in a Church, but an Hall, Parler, or Chamber, where that kind of Magiſtrate was a Knight, or Gentleman, or many times in a Shop when he was a Trades-man, which the Kings faithful Subjects abhorred; and ſome of them having warmed themſelves by the Farming of the Kings Revenue and thoſe grand and ever to be deteſted Artifices of *Advance* and *defalcation*, which have ſo much cankred, decayed, and ruined it; and others that li ned their conſciences with plundrings and ſequeſtrations, and *Committee*, ungodly Emoluments did fall again to their former Trade and Engines of ſubverting our Laws, and turning the Juſtice of the Kingdom into their Abortive projects, and new-found Politiques; and hoped in the end to recompence the loſs of their poſſeſion of the Lands of the King, Queen,

Prince,

Prince, Nobility, Gentry, Bishops, Dean and Chapters, to which they having purchased at an easie rate, were taken from them, and enforced to be restored; and their hopes of gaining the Lands and Endowments of the Universities and Colledges, which by a failing of Providers, and some mistakes as they wickedly thought of Divine Dispensations, or some Errors of their new lights they had unexpectedly lost.

And therefore summoned & got together their mis-apprehensions, and Invectives against that antient, very legal & rational custom of Fines to be Pay'd upon Original Writs where the Debt or Damage exceeded Forty Pounds; which from the Year 1651. unto his Majesties happy Return unto his Throne, had by their Rebellions and ungrounded clamors against the payment of them, to make a misled people the more willing and able to continue and contribute to a War against their consciences and eternal happiness been taken away, or laid to sleep.

In order whereunto in a Book Entituled

the

the Wants of England Printed in the year 1667. it was among other things offered to the conſideration of both Houſes of Parliament, that *according to the law of God and other Chriſtian States, Chriſtian clemency, gentleneſs and mercy, and the antient Laws and Cuſtomes of this Kingdom, no perſon be for any new debt caſt in priſon, but be left at liberty to work out his Debt by induſtry.*

In the year 1669. a Petition was exhibited to the King and both Houſes of Parliament, that *in Actions of Debt there may be no Arreſt or Impriſonment of the Debtors Body, but a Summons made at his Houſe, or hung at his door, and for want of an Appearance his Goods and real Eſtate to be ſeized,* and the like in the year 1671. And in the ſame Year a Bill for an Act of Parliament was with great Importunity deſired for *the Regiſtring of all Incumbrances of Land, and of all Debts and Ingagements,* then which nothing could have more undone the greateſt part of an Impoveriſhed Nobility and Gentry by the late Wars, and Taxes nor any thing more have Bankrupted Citi-

Citizens and Trades-men, whose Estates do consist in a great deal more in Credit and Opinion, than in reality and substance. But the promoters of those Innovations who endeavoured to pull in pieces our well-established Laws concerning Arrests and Outlaries, did in those their Attempts speed no better then *Balaak* the King of *Moab* did by sending for *Balaam* to curse the children of *Israel*, when notwithstanding his Erecting of several Altars, and all his solicitations and promisses of Rewards, he could not hinder him from blessing instead of cursing them, for the wisdom of the King and Parliament, and his Privy Council did think it to be more for the good of the people to suspend their desires and Devises, until the King might understand that there could be any reason, cause, or ground to alter or forsake the old Fundamental Laws, so for many Ages well approved to comply with their humors & ill designes, but being willing to give what reasonable content he could to that small complaining part of the people without prejudice & damage to the universality & greater number of his Subjects, did as the fittest expedient, and all that the Law could

permit, and his reason and Soveraignty perswade him to do for the allaying that distemper which had seised upon a sort of ignorant, seditious, & unquietspirited people whom no reason can satisfie, but would set up their new devices which are never like to perform their Promises and Intendments. And needed not (as touching the taking away of the Process of Arrest & Utlary) to have troubled his Majesty and Parliament, and themselves and others with such unwholsom and improbable Remedies for that which their Ignorance and Vain Imaginations only told them were Grievances, but should rather have acquiesced in a due consideration that his Majesty did not hold it to be agreeable to Justice to abolish the Process of Arrest or Outlary, or to change or take away the Fundamental Lawes which established or allowed of those Antient and legal kindes of Law proceedings as grant in the Year of our Lord 1664. by the advice of his Privy Councel his Commission for the relief of Poor and Distressed Prisoners, under the Great Seal of *England* to the Arch-Bishop of *Canterbury*, Bishops of *London*, *Winchester*, Ra-

chester, Lord Mayor of *London* for the time being, Judges and Justices of the Courts of Kings Bench, Master of the Rolls, Judges of the Court of Common Pleas, Barons of the Exchequer, Chancellor of the Dutchy of *Lancaster*, Masters of Requests, and Chancery, Attorney and Sollicitor-General, and Attorney of the Durchy of *Lancaster*, Deans of *St Paul*, & *Westminster*, Lieutenant of the Tower of *London*, Bishops, Chancellors, with the Advocats of the Court of the Arch Bishops of *Canterbury*, and Bishop of *London* for the time being, *&c.* and divers other Commissioners therein named, *to call before them such Prisoners and their Creditors in and upon Actions of Debt, Case, Trespasse, Trover, Detinue, or other Personal Actions, Judgements and Executions whatsoever thereupon, and to treat for Compositions and Agreements, (some of the Judges of the Court out of which such prisoners have been committed to be privy to such Compositions and Agreements) to the end that the said Prisoners might be relieved, and have such reasonable years, dayes and times of payment for such debts and damages*

as they shall not be presently able to satisfie, and with such Security for payment thereof, as in equity and good Conscience, having respect to the ability of the Prisoners, and charge of Wife and Children, and other incidents to pious Cases considered: And if any Creditor should refuse to appear before them, the Commissioners were impowred *to punish them, and take such Order for their Appearance as they should think meet, and to use all lawful wayes to make them take such reasonable Compositions as to any Three or more of them should be thought meet.* And his Majesty therein Declared, *that his meaning was to be aiding and assisting with his Grace and Favour to the misery and calamity of such as be truly poor and distressed; and not unto such as lye in Prison rather of wilfulness and obstinacy, and out of a resolution to retain large and ample Estates to themselves*, and therefore straightly *charged the said Commissioners to be very vigilant and circumspect therein*; and did in the said Commission mention that Queen *Elizabeth* did upon the supplication of the Prisoners in the Prisons of the *Fleet*, and *Kings Bench* in the

Eight

Eight and twentieth Year of her Reigne *Authorize certain* Commissioners under the Great Seal of *England for the ordering and compounding of the Controversies and Causes between the distressed Prisoners and their Creditors, and such others by whom they were detained Prisoners, or in Execution, and continued the said Commission until her Decease. And that King James being informed that certain Clauses in the said Commission were Derogatory to the Common Laws of* England, *and that by colour of the said Commission which was intended for the Charitable relief of poor, miserable, and distressed Prisoners, certain refractory and obstinate Debtors which rather wanted will then meanes to satisfie their just Debts, took occasion to molest and trouble their Creditors, did to prevent all occasions of Inconveniencies to his loving Subjects, especially such as tended to the breach of his Laws, forbear for many years to renew the said Commission; and finding that his forbearance had wrought a good effect by discouraging obstinate and wilfull Debtors that sought nothing more then Evasions to avoid the payment of their just*

Debts,

Debts, so also that for want of that, or some other charitable course for the relief of such as were truly and indeed poor, distressed, and miserable, and wanted meanes to satisfie their Creditors, it had been occasion to pester and fill his Prisons with the bodies of such persons whose punishment could no way avail their Creditors, but rather was an hindrance to the satisfaction of their Debts, for that during the time of their restraint they were no wayes able to go about or attend their lawful business, but must of force consume themselves and that little that they had miserably and in Prison, did by his Commission under the Great Seal of England in the Sixteenth Year of his Reigne, by the advice of the then Lord Chancellor of England, and also of divers of his principal Judges of his Courts at Westminster, authorize the Commissioners therein named to proceed according to the Tenor of the said Commission for the relief of the said poor Prisoners in the said Prisons; and afterwards being informed that his said Commission had not taken that good Effect which was expected, renewed the said Commission, and thereby prescribed and directed such a

moderate

moderate courſe as that neither the Inſolence of wilful and obſtinate Debtors ſhould be thereby incouraged to the deregation of his Laws, nor yet his Grace and Clemency be wanting unto ſuch to whom it ſhould be meet to Extend the ſame, did upon the humble ſuite of the diſtreſſed Priſoners in the Priſons of the Marſhalſea *and other Priſons in and about the Cities of* London *and* Weſtminſter, *and the places near adjoyning to the ſame, whoſe Caſes were as much to be commiſerated and lamented, as the ſaid Priſoners in the ſaid Priſons of the* Kings Bench, *and the* Fleet, *by another Commiſſion under the Great Seal of* England *in the Two and twentieth Year of his Reigne authorize certain Commiſſioners therein named for the Ordering and Compounding of the Cauſes of the diſtreſſed Priſoners in the Priſons within the places aforeſaid; and that his Majeſties Royal Father did by Two ſeveral Commiſſions under the Great Seal of* England, *the one bearing Date in the Fourth Year of his Reigne, and the other in the Sixth, impower divers Perſons therein named, to the ſame or the like purpoſe.*

Nevertheleſs

Nevertheleſs the *Good Old Cauſe* (as they are pleaſed to miſ-name it) with all its hypocritical tricks of State muſt not by any meanes be abandoned, but they which did ſo much adore that *Empuſa* or Witch called the *Publique* Faith which (like the *Golden Calf* made by the Idolatrous children of *Iſrael*) helped them to great ſtore of money, plate, and Rings, to furniſh out and maintain a Rebellion, could not now forbear to be as violent as they could to pull Down the ever to be reſpected and honoured better *Publique Faith* and Juſtice of the Nation, and Diſturb his Majeſty & his ſubordinate Judges & Magiſtrates in the adminiſtration thereof, and therefore ſome *Synon* or *Trojan* horſe was of neceſſity to be made uſe of or introduced under a colour of publique Good, or ſome ſtratagem or mine prepared to accompliſh that by cunning and circumvention which by ſuit or force of Law, reaſon, and arguments they could not before be able to obtain, and for that had as they thought a pattern or way cut or chalked out by the before-mentioned *S. D.* and ſome

of

of his levelling Clerks and Attornies associating with him in their aforesaid proposals presented to the Committee for Regulation of the Laws in the year 1650. wherein they alledged that *what they had proposed was not that the Writ of Capias should be taken away first, but humbly conceived that it would be better by finding out nearer and cheaper wayes to bring the old road to be neglected, then to deprive the suitors of the Old before they can have experience of the new; and it was only proposed by way of supplement not to take away the antient course of proceeding by way of Capias, and Exigent if the case shall require it.*

Proposals of S. D. and divers Attorneys of the Court of Common Pleas to the Committee for the Regulation of the Laws 24 May 1650.

CHAP. XIX.

That the Proceedings in the Common Law declared by the new way of a peremptory Summons, or the old by Writs of Summons, Pone, and Distringas, or Writ of Capias in the Plaintiffs pleasure are not consistent or agreeable one with the other, and that Lawes being to be binding are to be certain and positive, not Arbitrary.

But such a State Essay, Bill of Comprehension, or rather Contradiction, whether the antient legal and rational usage and custome of proceedings in the Law by Writs of Summons, pone and Distress to be legaly executed by Sheriffs where the Defendant hath a visible and certain Estate, which for Expedition of Justice, have by alteration of Times, Increase of Trade, and a necessity of Law and Reason not been so much used as heretofore it was, and is not yet forbidden by any Act of *Parliament*, or Rule of Law, and the process of *Capias*

and

and Arrest which, for many Ages past have not only been allowed and approved by this Nation, but the greatest (if not all) of the civilized part of Mankind as a principal Incident essential and necessary *sine qua non* in the distribution of Justice where the Defendant hath not a visible Estate to secure him from the Sheriffs Return of a *Nihil habet* is a Fugitive, or likely to be such a one, or is not to be found, and hath nothing but his body to be a pledge or security, that he will *Judicio sisti & judicatum solvere*, or that the process of Exigent in order to an Utlary, which without an often reiterated contumacy capsing the Utlary it self, do offer a lesser violence to the person of a Defendant then the Writ of *Capias* doth, can by any rule of right reason be exchanged for peremptory Summons and seizures; or can be for the good of the people, to cause them to tear and tire one another with abundance of charges, delayes, and *Affidavits* in a Cirque or Circle of Law contentions; who will certainly when they shall find the sad effects or event of it not think themselves well

well used to be decayed, or inticed to abandon their own good laws for such new and troublesom devices which may be to as little avail as to renounce skilful, able, and honest physicians to drive a trade with ignorant Empericks and Mountebanks when they are not sick, or need them; and may time enough believe that such a Novel way of *peremptory Sanguinis* hath so many symptomes or marks of Evil upon it, and so easily discernable as their gaine by it will be no more then to receive a Scorpion instead of a Fish, or to have *Coliquintida* put into their pottage pot; and they that are so fond of it, and willing to procure such a mischief rather then a blessing for their fellow-subjects might have forecasted that evils are most commonly according to corrupt Nature better welcome, and more likely to receive entertainment then good, and do by their novelty or correspondence with bad humors, designes, or interests to often seize upon or invagle the greatest and less prudential part of the people when cheapness or a pretence of expedition shall be some of the perswaders

into that which can arrive to no better a construction or event than to make the Law-maker and Soveraigne advising with his Two Houses of Parliament, so incertain of the sequel or product thereof as to make and part of the Law-temporal another at the pleasure of every particular man, and to Enact it as *Adiaphorous*, or indifferent this way or that way, when a very long course of time and experience, and the approbation of so many Laws and Ages past do record, and witness the excellency of that which some busie Ignoro's would have to be exchanged for an accumulation and semblance of [illegible] be expressed Inconveniencies and Mischiefs, and such a device or fancied alteration cannot without a Prophetique spirit, or attend it perswade the most sanguineous easily credulous that it can be equally and fully as good as the other, or render it to be indifferent, or give any absolute or infallible assurance that those unlikely hopes will ever bring them to their promised success; and if it be not to be ranked amongst the indifferents, must be either better than the former antient courses

blow

courses which none have yet experimented, or worse, and then not at all noise imposed upon the people.

For Laws being *Rectæ præceptiones & prævi depulsiones* always intended by God and good men to advance that which is good, and suppress that which is bad, *Iniquum ab iniquo & licitum ab illicito separare*, and to discern and divide betwixt good and evil, and said to be Laws *a ligando*, and to be properly no Laws if not Obligatory and binding, are to be certain and positive, not Arbitrary as unto those which ought to obey them; and as much as right reason will permit immutable, especially if deduced from the dictates of nature, as that of the preserving the Authority of Courts of Justice and their administration of it, are to those that seek for help in the maintaining or recovery of just rights and Properties, but not to be ambiguous in certain *latitudinarian* or indifferent; for although there may be many who would be well enough content to be Judges of their own Causes, and the Executioners of their own Decrees, or if that would not be allowed,

would

would be *Lictors* or *Serjeants* to hale men to Justice, or by open clamours cry *harow* as the People of *Normandy* were antiently said to have done to their Duke *Rollo* when they cryed to him for Justice who was wont never to fail them, which after a long process of Time gave us the Original of the word *Hue and Cry* yet much in use amongst us in matters of Felony. And the like was in the early days of the world not unusual amongst other Nations in their seeking to their Kings and Princes for redress of Wrongs before the more happy way of Establishing a fixed rule and course by Courts of Justice.

Yet those their unfitting desires for such an Arbitrary Act and Indifferent Law ought to be allayed, and the more safe and sure paths of Justice kept according to the patterns and direction of the best of Presidents, for that God himself the wisest, greatest, and best of Legislators when he gave his righteous Laws to his people of *Israel*, and commanded that *a Neighbours rayment taken for a pledge should be restored unto him before the Sun go down for his covering to* Exod. 22. v. 26.

sleep

sleep in, or the Command not to *disobey the sentence of the Judge* under no less a penal-
Deut. 17. 12. ty then *the loss of life*, (from whence the reason and equity for every man to be obedient to the Authority of Court of Justice in their legal Process may deduce its Original) was not left as a matter indifferent, but absolute and positive.

13 E. 1. Ca. 18. Where the Statute of *Westminster* the 1st which giveth a Plaintiff his Election to take his Execution upon a Recovery of a Debt by Writ of *Fieri Facias*, or *Elegit*, the plaintiff taking out his *Elegit*, dares not enter it as he ought upon Record, for that he should be then debarred of any other remedy against the person of the Defendant
1 H. 4. 6. by *Capias ad satisfaciendum*, & a man cannot by Law have Two Writs of *Scire Facias* at once in a Common persons case, whereby to have Damages twice recovered against him. After an *Elegit*, although the Sheriff return that he hath neither Lands, or
15 H. 7. 14. 15. Goods, the plaintiff shall not have an Execution against the Body, a *Capias ad satisfa-*
45 E. 3. 19. *ciendum* doth not lie after a *Fieri Facias*, until a *Nulla bona* returned, nor a Fie-

ri

ri Facias or *Elegit* after Imprisonment of the Defendants body.

A Writ of Annuity purchased pending another, was abated where two brought Writs of *Quare Impedit* one against the other returnable at one and the same day, the one was discontinued, and they pleaded upon the other, in the Case between *Bery* and *Heard* in the Seventh Year of the Reign of King *Charles* the Martyr, it was in the Court of Kings Bench adjudged, that *where a man had his Election to seek his Remedy by the Common Law, or by the Statute of Glocester that gave an Action of Waste, he could not do it by the one way and the other*, for our Laws and Courts of Justice would never allow a Plaintiff to have two Actions or Remedies for one and the same thing at the same time, but were so careful to hinder it, as they suffered discontinuance of Process and Pleas in Abatements where one Action was brought depending another for the same matter: And *Bracton* saith, that *where a man hath an Action depending, and bringeth another for the same thing*, Cadit breve posterius, *the later is to*

34 E. 3. Br. 922. Pas. 22 E. 3. 4.

Jones Reports, 255.

Bracton lib. 5. c. 17.

be quashed; agreeable whereunto at this day in Chancery where a man hath an Action depending at the Common Law, and seeks relief in Chancery upon the same Account, he is put to make his Election in which Court he will proceed.

And therefore if such an Arbitrary Act of Parliament should be made to give the Plaintiffs their Election to proceed by the way of the new contrived way of peremptory Summons, the former wayes of *Summons*, *Pone*, and *Distrainings*, or *Capias* not being prohibited, the proceeding by procels of peremptory Summons ought to be entred in a Court of Record, and entred may be more prejudicial to the Plaintiffs then they expected, for if they cannot resort or return again to the former better wayes of proceedings, they may find cause enough to repent of their being so fond of a new way, when the old will appear to have been much better, which to reverse or discontinue cannot be, for the Interest of the King or his people, when it shall have no better reason or foundation for it.

For

For if the Propoſers could give unto themſelves or any of their fellow Subjects any aſſurance that it will be probably for their good and benefit, yet if the King, who is ſupreme and ſuperiour to all the Judges in his Dominions, were but a ſubordinate Judge, he would as the Civil Law declareth, tranſgreſs the rules of Juſtice and Right reaſon, if he ſhould follow *opinionem probabilem relicta & rejecta probabiliori*, an opinion that is but probable, when there is an opinion to the contrary more probable; and *S. D.* and his then Confederates might have conſidered, that a Proceſs againſt the Goods and Chattels of a Defendant, is of a different nature from that which is againſt his Body, that *duo contradictoria non ſint nec poſſunt eſſe ſimul vera*, contradictions neither do or can at one and the ſame time agree; and that *Practica ſunt ſpeculativis præferenda*, what is in ſpeculation of a poſſibility not at all experimented, is to give place to that which with an univerſal or major part of a conſent hath been long practiſed.

Zeiglerus dicaſtice ſive de Judicum officio concluſ. 40. §.1,9,46,53

CHAP. XXI.

That it will not be for the Interest of the King or his Subjects to give way to that Design which may open a passage to other Innovations and Designes as much if not more inconvenient and prejudicial.

FOr that all his good people by the sad and inexpressible calamities and miseries which they have lately endured by the Wars and Tumults unjustly raised against the King and his Laws, are not now to learn what a deep dyed hypocrisie and pretences for Reformation would have, or to believe the evil consequences which have risen from a too much yielding to those popular humors, which as that Royal Martyr hath in his Solitudes and Sufferings declared, *served to give life and strength to the almost infinite activity of those men who studied with all diligence and policy to improve their Innovating designes*, & how dangerous the permitting of Innovations would be, & how

how careful all Princes and wiſe men have heretofore been to avoid them; ſo that if there were nothing elſe to make the world out of love with them, the never to be ſatisfied inquietude of many of that ſort of people in the matter of Religion and Church-government, and the ſwearing, liking, and ſhortly after diſliking and hating the Solemn League and Covenant, the by too many as it may be feared intended *ſtanding Rule of Rebellion*, and their unfixedneſs in every thing but their unwearied malice and ill deſignes againſt Monarchy and the preſent Government, do and will abundantly proclaim that whatever hath been condiſcended unto, (and by that a meaſure may be taken of the Future in giving them a liberty to play the Fools with the Sacred Scriptures,) hath but like the thirſt, and alwayes craving of an Hydropick ſick perſon, increaſed and provoked a deſire of having more.

Wherefore they that built upon ſuch wicked principles of overturning the State and Regal Government are if they had any reaſon, or were ever likely to have any

for

for their demands to be content to be denyed until they ſhall have renounced thoſe pernicious ends and dangerous Tenents and poſitions, they began their works and deeds of darkneſs withall, and ſhall have proved that Juſtice ought to have no Sword to defend and protect her ſelf and others, that Courts of Juſtice can be to any purpoſe without a certain power, conſtraining & puniſhing Authority, that the proceſs of Arreſt and Utlary are not incidents thereof, and to be neceſſary Attendants thereupon, that the Eternal and Almighty Law giver did not allow of that which the *Greeks* & *Romans* thoſe great Ingroſſers of wiſdom, after the many very many commotions of their people for their more ſevere way of enforcing the paymcnt of Debts, performance of Contracts, & preſervation of the publick Faith, and one man unto another, which *Tully* held to be ſo very neceſſary, as he was of opinion, that *nulla res vehementius reympublicam continet quam fides*, that nothing more concerns a Commonwealth then the keeping of Faith & Credit, & therefore adviſeth it by all meanes to be

Cic. Offic.

pre-

preſerved and kept, have acknowledged to be the beſt and moſt contenting Expedient for an obedience to Judges and Courts of Juſtice, and the Civil Magiſtrates, and that all the Eſſaies of an Indulgence to liberty made uſe of by ſome other Nations could never yet ſo far prevail as to make the moſt of the civilized Nations of the world not to continue and make uſe of it, when time and a long uſage have upon ſo great and undeniable grounds of right reaſon adjudged the proceſs of Arreſt and of Utlary alſo in caſe of reiterated contempts to be neceſſary not only to Trade & Commerce, but to the ſupplying of mens neceſſities or occaſions, or the borrowing of money upon the pledge or pawn of the body, or liberty, and it hat through the greateſt part of the world been *ab omnibus, & ſemper, & ubique in praxi & obſervatione. Et cum conſuetudo ſit optima legum interpres & obſervantia cum praxi ſubſecuta*, when cuſtome and long and conſtant experienced practices have followed the proceſs of Arreſt and Utlary may certainly deſerve an Approbation, which

l. 37. ff. de Legibus, l. 34. l. 114. ff. de Reg. Jur. Tob. Paurmeſter de Juriſdict. lib. 2. ca. 6. num. 119.

to

to alter, or take away, or turn out of the courſe or Channel in which it hath ſo long and happily ran, can never anſwer the ends propoſed, or be valid and ſufficient to perſwade his Majeſty and his Parliament to ſuffer ſo eſſential and great a part of the juſtice and happineſs of his Kingdom to be ſullied and expoſed to all the deſigns, fancies and miſtakes of every one, who by diſlocating good and antient conſtitutions, would furniſh out their hopes of procuring new Offices or Imployments, and deliver it up as a priſoner to all the Knavery and Folly of every one who ſhall be either willing to deceive, or hath an Ignorance and Credulity eaſie to be deceived, eſpecially when he ſhall thereby give opportunities and advantages to the rich to oppreſs the poor, and ſuch as are in a weak or ſinking condition of Eſtate, put the Lamb under the mercileſs paws of the Bear or Lion, ſubject every mans credit by which he lived, thrived, and was ſupported, to the domineering and tyrannical humours, pretences, deſigns and cruelties of Uſurers, Brokers, or ſtony-hearted Creditors, who

upon

upon the advantage of ſome bargain, contract, or rigour of Law, would rather ruine men and their wives, children and families, then give a little time of reſpite by a Chriſtian patience and forbearance.

Nor is it to be expected that his Majeſty would be willing to kindle and continue contentions, aſſiſt the knaviſh contrivances, malice or revenge of ſuch as ſhall ſeek to enrich themſelves by working upon the fears or neceſſities of men indebted.

And diſparage the Wiſdom of former Princes, Parliaments, and Ages, and his own Authority, to grant an alteration of ſo profitable and well approved conſtitutions and cuſtoms, in order to the gratification of no body knoweth whom, why, or for what, or what is deſigned to be the effect of ſuch alterations, by thoſe who by a wicked combination with other Innovators, may by a choice of ſeverally managing the grand deſign and firſt intention of changing the Government, make it their buſineſs to promote this as a part of it, and an inſet to the other deſignes and deſires of the reſt of the promoters of that which

they called the *Good Old Cauſe*, when it never deſerved to be ſo accounted: And a *Warwickſhire* Rebel, and Gentleman of a good Eſtate and Quality, before he was one of the murderers of his Majeſties Royal Father, was after that horrid fact committed, heard publickly to ſay in the preſence of a witneſs whoſe teſtimony is unqueſtionable, that *he thanked God that he had lived to ſee the ruine of Monarchy, for it had been his deſign and endeavour for eight and thirty years then laſt paſt, ever ſince he came from* Geneva; and another of that wicked party was not aſhamed to ſay, that *they fought not for Religion, but Eſtates*; and hath ſo ſadly as he hath underſtood the ſecret and reſtleſs machinations of that kind of people, and that his Bleſſed Father ſuffering multitudes of ſorrows, and troubles, and a Martyrdom becauſe he would not ſacrifice the Laws of the Kingdom, and Liberties of his people to an Arbitrary Power of his Murderers, had reaſon enough to back and Fortifie his Reſolution, when he declared that *he would ſtudy to ſatisfie his Parliament and*

BISHOP BASTWICK, § 4. in his Soliloquies upon the 19 Propoſitions.

and People, but would never for fear or flattery gratifie any Faction how potent ſoever, for that were to nouriſh the Diſeaſe, and oppreſs the Body.

Varſevicus de legato 22.

Eſt enim virtus conſtans & perpetuum quid quod Juſtitia appellatur & quod perverſis & deprevatis hominum moribus & conſuetudinibus nec poteſt, nec debet unquam mutari.

FINIS.